No. 284

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JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 284.

WILLIAM E. HALE, as Receiver for the Collection and Enforcement of the liability of stockholders of The Northwestern Guaranty Loan Company, (a Corporation),

Petitioner,

vs.

EDWARD P. ALLISON, et als.

On writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF IN BEHALF OF PETITIONER.

WILLIAM E. HALE,
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Of Counsel.

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For Petitioner.

PIONEER PRESS CO., St. Paul, Minn.

SUPREME COURT OF THE UNITED STATES.

October Term, 1901.

No. 290.

WILLIAM E. HALE, as Receiver,

Petitioner,

vs.

EDWARD P. ALLISON et als.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF PETITIONER.

This cause comes before the court on a writ of *certiorari* to the Circuit Court of Appeals for the Third Circuit, to review a decision affirming a decree of the Circuit Court for the Eastern District of Pennsylvania, dismissing a bill filed by petitioner, for the purpose of enforcing the liability of the defendants as stockholders of an insolvent Minnesota corporation.

STATEMENT OF THE CASE.

The present suit grew out of the insolvency of the Northwestern Guaranty Loan Company, a corporation, organized under the laws of the State of Minnesota, and involved the right to enforce a liability imposed by the laws of that state upon corporate stockholders.

Complainant (petitioner here) is a receiver, appointed by the [illegible] of the state of domicil, in conformity to the provisions of the laws of that state, for the purpose of enforcing and collecting the liability indicated.

The several defendants were stockholders of the insolvent corporation, and citizens and residents of the commonwealth of Pennsylvania.

The stock liability provided by those laws, as indicated both by the statutes and decisions of the highest court of that state, in terpreting the same, contemplates the creation of a fund for the equal and common benefit of all corporate creditors. The liability is construed as a special or quasi asset as to creditors, and is not enforceable by the corporation or its successors in interest as receiver, assignee, or otherwise.

Provision is made by the local law for rendering this fund available, whereunder suit is, in the first instance, to be instituted in the appropriate courts of the domicil, to the end that an account may be taken and stated of the corporate debts and assets, the deficiency ascertained, and an assessment or call made upon the several stockholders for meeting this deficiency and for the appointment of a receiver to collect and distribute the same, under the jurisdiction and order of the court, equally and pro rata, amongst all creditors in interest.

The allegations of the bill as filed may be summarized as follows:

By the Minnesota Constitution (Art. 10, Sec. 3), the so-termed statutory or superadded liability is imposed on stockholders of all corporations, with certain exceptions not here material. The Northwestern Guaranty Loan Company was organized under the General Laws of that state in 1884, for the purpose of conducting a general investment business, having its principal office at Minneapolis, Hennepin county, that state.

In 1893, in proceedings had and taken against said loan company, in the courts of its domicil, it was adjudged insolvent under the general insolvency laws of that state, and a receiver appointed to wind up its affairs.

Subsequent to this adjudication, the creditors, in conformity to the laws of that state, caused to be instituted in the local courts, a suit in equity, to enforce the liability of stockholders above referred to, and to that end, for an accounting of the corporate debts and assets, the determination of the deficiency of the latter, and an ascertainment or call for the amount necessary to be contributed by the stockholders for liquidating such deficiency, as well as for the appointment of a receiver for the collection and enforcement thereof.

Conformably to the statutes, notice was given to all creditors in interest, to become parties to the proceeding indicated, or be barred from any right of participation in the contemplated recovery.

The corporation, its general receiver, and all the several stockholders were made parties defendant and process served on all thereof, except the outside or non-resident stockholders.

The proceedings in the cause indicated resulted in a decree stating the account of the corporate affairs and determining that the total maximum liability provided by the laws of that state be assessed and collected from all stockholders of the corporation in common.

Judgments in favor of the several creditors and against the corporation were therein rendered for the ascertained indebtedness, and personal judgments were further rendered in conformity to the decree, for the ascertained liability or assessment against the several Minnesota stockholders, parties thereto.

By the same decree petitioner was appointed receiver, for the purpose of collecting and enforcing the assessment, and was thereby expressly authorized and empowered to take any other and further proceedings as might be necessary for realizing and recovering the assessment from non-resident stockholders over whom the court had not acquired jurisdiction for the rendition of personal judgments.

The decree further provided for return of the funds so collected into the court, for equal and pro rata distribution amongst the creditors, according to law.

An exemplification of the record of the judicial proceedings referred to was exhibited and attached to the bill. (Record, pages 14-98, inclusive.)

It was further alleged that the defendants were stockholders of the insolvent corporation at the date of its adjudication of insolvency and at the presentation of the bill, holding and owning respectively the number of shares therein stated.

The defendant stockholders were alleged to have been, at the times stated, non-residents of the State of Minnesota, by reason whereof, none were served in the proceedings had and taken in the courts of Minnesota, or entered voluntary appearance therein, or had contributed any part or portion of the liability stated.

The bill was framed as an auxiliary bill in aid of, and to enforce, the decree of the court in the parent suit, and prayed that the defendants should be held and adjudged to contribute to the

fund contemplated by the local laws, the amount thereby and by said decree provided.

As originally presented, the original creditor in the Minnesota proceeding was joined as a co-complainant with the receiver, but on the hearing leave was asked and obtained to dismiss the creditor from the suit. (Record, page 116.)

To this bill the defendants filed demurrers, substantially identical in form, the grounds whereof may be thus summarized:

First—That as it appeared from the bill and exhibit that the defendants were not served in the proceedings had in the Minnesota court, the judgment and decree of that court was in nowise binding or conclusive upon them;

Second—That the receiver, appointed under the proceedings had in the Minnesota court, had no standing in any other court than that by which he was appointed;

Third—That the relief sought was one which no court of equity, outside of the commonwealth of Minnesota, was required to administer;

Fourth—That if the proceedings of the Minnesota court were of any force or effect as against the defendants not served therein, there was an adequate remedy at common law.

The demurrers assigned or specified other grounds, but the substance is comprehended in the general summary above. (Record, pages 99-112, inclusive.)

On the hearing and argument before the Circuit Court, the demurrers were sustained ostensibly on the ground that the cause presented nothing of equitable cognizance, and that there was an adequate remedy, if any remedy existed, at law, and a decree followed dismissing the bill without prejudice.

From this decree an appeal was prosecuted to the Circuit Court of Appeals of the Third Circuit.

Upon hearing before that court, the decree below was affirmed.

Thereupon the present application for writ of *certiorari* was presented to this court and allowed, and a return thereto made and filed herein on May 3, 1901.

ASSIGNMENT AND SPECIFICATIONS OF ERROR.

The specifications in this regard presented to the court below are incorporated in the Record, pages 122-123.

Those intended to be presented in the present argument may be comprehended in the following:

The decree dismissing complainant's bill was erroneous in that—

First—It held that a court of equity, on the facts stated by the bill, was without jurisdiction;

Second—In that it denied the jurisdiction of a court of equity on the ground that the right asserted and shown by the allegations of the bill was equitable in character;

Third—In that it denied the jurisdiction of a court of equity on the ground that this was an auxiliary proceeding brought in aid of and to enforce an equitable decree of another court;

Fourth—In that it denied the jurisdiction of a court of equity on the ground that the present suit could be maintained for the purpose of preventing a multiplicity of suits;

Fifth—That it held the proceedings had in the courts of Minnesota and alleged by the bill were ineffectual as to defendants;

Sixth—That it denied that petitioner was possessed of capacity to sue in jurisdictions outside that of his appointment as a matter of right;

Seventh—That it denied that petitioner was possessed of capacity to sue in jurisdictions outside that of his appointment on the ground of comity;

Eighth—That it denied full faith and credit to the judicial proceedings of the courts of the State of Minnesota as required by the Constitution of the United States;

Ninth—In that it failed and refused to hold, on the allegations of the bill, that complainant was entitled to relief.

BRIEF AND ARGUMENT IN BEHALF OF PETITIONER.

It will have been observed that the ostensible ground of disposing of the present suit was that a court of equity was without jurisdiction to grant the relief sought, and that the remedy, if any, was at law.

The history, however, of this litigation in the circuit in question having for its object rendering the liability of the stockholders of the Northwestern Guaranty Loan Company, there resident, available for creditors, as well as the disposition of kindred proceedings brought there and involving similar liabilities im-

posed by statutes of other states, cannot fail to convince the most casual observer that the real and substantial ground of decision went to the merits of the cause, whereon both the Circuit Court and the Circuit Court of Appeals have so far committed themselves as to leave practically no room for doubt that, as interpreted by them, there is no available remedy in any form.

If this be not apparent from an examination of the existing precedents in that circuit, it must be admitted that the settled law there is so far unsettled and contradictory as to defy any attempt at classification or reconciliation.

At the time this litigation had its inception, the law relating to the foreign enforcement of statutory stock liabilities, in cases where the domiciliary law (as in the case at bar) provided that such liabilities should be for the equal and common benefit of all corporate creditors, was without definite or guiding precedent.

In this condition of the law an original bill in equity was filed by the creditors of the Northwestern Guaranty Loan Company, against the several stockholders thereof, residing in Pennsylvania, in the Circuit Court of the United States for the Eastern District of that state. There, as here, the defendant stockholders appeared and demurred, assigning various grounds, both to the merits and form of proceeding, and a decree was rendered dismissing the bill.

From this decree an appeal was prosecuted to the Circuit Court of Appeals of the Third Circuit, wherein the decree was affirmed, the court assigning the following reasons:

"The laws of Minnesota impose on such stockholders a personal liability equal to the par value of the stock held, and render them subject to call for payment of so much thereof as may be necessary to pay creditors after the company's assets have been exhausted. * * * * The plaintiff says in the brief furnished us, 'the laws of Minnesota impose the ordinary stockholders' liability and prescribe an essentially equitable remedy for its enforcement.' This is true; and the remedy seems to be fully adequate to secure the creditors' interests under all circumstances. * * * * The statute seems to contemplate a proceeding against all stockholders in corporations organized under the laws of the state and a final decree therein. * * * * *Of course*, if the decree is conclusive, the court could not enforce it against foreign stockholders, *but in such case it might be enforced by auxiliary equity proceedings where the stockholders reside.*"

Elkhart National Bank vs. Northwestern Guaranty Loan Co. et al., 87 Fed. Rep. 252.

In conformity to this holding, the correctness whereof, in the light of principles since then well established, cannot be doubted, the present bill was filed in that circuit as an auxiliary bill, in aid of, and to enforce, a decree of the court of corporate domicil, in all respects complying with the requirements of the decision quoted.

Notwithstanding, demurrers were again interposed, and the result announced in an opinion by the same court, wherefrom we excerpt the following as sufficiently indicative of its present attitude:

"Several demurrers were interposed, but it is not necessary to refer to them separately or in detail. The points urged in their support are in substance: (1) That the complainant's appointment as receiver by the Minnesota court did not entitle him to sue as such in the Circuit Court of the United States for the Eastern District of Pennsylvania. (2) That the defendants here were not bound by the proceeding in Minnesota. (3) That irrespective of any other question the suit in equity was not maintainable because there was an adequate remedy by separate action at law against each of the stockholders who were joined as defendants in the bill.

"We strongly incline to the opinion that the two points first stated might well have been sustained. This receiver is but a creature of the court which appointed him, and no legal title is vested in him. Therefore, his asserted right to sue in another jurisdiction cannot be conceded unless the law as declared in Booth vs. Clark (17 How. 322) has been changed in this respect by the decision in Relfe vs. Rundle (103 U. S. 322), and we are not prepared to say that it has been.

Hale vs. Hardon, 87 Fed. Rep. 283.

"None of the defendants was a party to the proceeding in the Minnesota court, and while we do not decide the matter, because it is unnecessary to do so, it is not to be inferred that we assent to the proposition that because stockholders of a corporation are so very privy in interest as to be bound by a judgment against it, they are also bound by a decree that they individually shall wholly or partially pay its indebtedness, although they have never had a day in court to controvert the existence of the facts upon which their obligation to do so is dependent."

Hale vs. Allison, 106 Fed. Rep. 258.

In the interim between the two decisions cited, the cases of Wigton vs. Bosler, 102 Fed. Rep. 70, and Tompkins vs. Craig, 102 Fed. Rep. 668, came before the Circuit Court of that circuit under statutes of the State of Iowa, of similar character to those of Minnesota here involved, and resulted in decisions adverse to the right to enforce the liability.

In view of the precedents thus indicated, petitioner feels amply justified in asserting that the real and substantial basis of decision in the case at bar arises from questions involving the merits, and that the various forms of technical objection, asserted and relied upon, merely indicate an indirect method of evading the pivotal points at issue.

A presentation, therefore, confined to the question of practice would subserve no useful purpose and leave the ultimate disposition of the more important questions as much at sea as they are now left, by the irreconcilable opinions expressed in the two successive decisions of the Court of Appeals of that circuit, hereinbefore excerpted and quoted.

Moreover, in this case, the nature of the appropriate remedy is so far connected with the nature of the right itself as to be practically decided and disposed of by the latter consideration. If we shall establish to the satisfaction of the court that the liability of stockholders, as created and imposed by the laws of the State of Minnesota, is equitable in character, contemplating the creation of a fund for the equal and common benefit of all the several creditors of the insolvent corporation; that the liability thus created is rather for contribution to the fund than directly to the creditors; that it is secondary in character and requires, as a condition precedent to its enforcement, an accounting of the debts and assets of the corporation; that the courts of corporate domicil, having jurisdiction of the corporation, are the only appropriate tribunals to exercise the requisite functions in this regard, for the purpose of determining the necessity for and amount in which the stock liability may be made available; and that the statutory provisions reserving jurisdiction in this regard contemplate and require, as a condition to the enforcement, a decree of assessment and the designation of a receiver as the representative of creditors, to enforce the same, the conclusion of the equitable nature of the right here asserted, and of the appropriate exercise of jurisdiction in chancery to enforce the decree of the domiciliary court, in auxiliary proceedings, where stockholders reside, as held by the Court of Appeals in the first of these decisions, will not be difficult to demonstrate.

These questions involve a consideration of the effect of laws of this class, imposing liability, on corporate stockholders, and how far such laws and proceedings had thereunder in the court of the domicil are binding on foreign or non-resident stockholders.

I.

CHARACTER, INTERPRETATION AND EFFECT OF LAWS IMPOSING LIABILITY.

The precedents of this court, from the earliest to the latest decisions, have uniformly established that the statutory stock liability, imposed by the laws of corporate domicil, is contractual in character and enforceable in any court where jurisdiction of the parties may be obtained.

Hawthorne vs. Calef, 2 Wall. 10;
Carroll vs. Greene, 92 U. S. 509;
Flash vs. Conn, 109 U. S. 371;
Whitman vs. National Bank of Oxford, 176 U. S. 559;
Hancock National Bank vs. Farnham, 176 U. S. 640;
Pinney vs Nelson, decided December 2, 1901, Law Ed. No. 3, page 52.

This contract, as shown by the cases cited, arises from and is consummated by the voluntary act of the stockholder in subscribing for or accepting the stock, wherefrom he is assumed to have acceded to the conditions imposed by the local laws.

It is thoroughly settled that the states, in granting corporate franchises, may impose such conditions as they see fit, and that these conditions are binding upon corporation and its constituent members alike.

Ashley vs. Ryan, 153 U. S. 436, 441;
Canadian Southern Ry. vs. Gebhard, 109 U. S. 527, 237.

Thus this court said in Carroll vs. Greene, supra:

"The legislature created the corporation and prescribed certain terms to which the stockholders should be subjected. This was an offer on the part of the state. It could be accepted or declined. There was no constraint. By taking the stock the terms were acceded to, the contract became complete, and the stockholders were bound accordingly."

Again, in Ashley vs. Ryan, supra, it was said:

"As it was within the jurisdiction of the state to grant or withhold the privilege of exercising corporate existence, it was, as a necessary resultant, also within its power to impose whatever conditions it might deem fit, as a prerequisite to corporate life."

Comprehended, as are these conditions, in the provisions of local statutes, the interpretation thereof, or of the resultant contract, presents largely a question of local law, wherein the decisions of the highest courts of the state of domicil are entitled to great, if not controlling, force and effect.

Flash vs. Conn, supra;
Chase vs. Curtis, 113 U. S. 458;
First National Bank vs. Franklin, 120 U. S. 747;
Bank vs Whitman, 76 Fed. Rep. 698;
Whitman vs. Bank, 83 Fed. Rep. 291.

The important question, and that regarding which conflict of opinion has heretofore arisen, relates to the effect, if any, to be accorded local remedial statutes, in the interpretation of the stockholders' contract

So far as such statutes have provided a several and independent remedy at law, in favor of creditors and against stockholders, the question has been fully disposed of by numerous decisions of this court.

In cases where the statutes contemplate an equitable remedy, or, in other words, that the liability shall be to all creditors in common, and the aggregate be treated and considered as a fund for equal and pro rata distribution, the precise question has not been presented to or passed upon by this court.

This question is presented in the case at bar and upon its solution depends the all important considerations here, viz.: (1) The effect of the proceedings had in the Minnesota courts on the absent stockholders, and (2) The right of the receiver to enforce and collect the ascertained liability.

If the contract of the stockholder is as broad as the conditions of the law of its origin, and that law provides, as one of its conditions, that the courts of the domicil, having jurisdiction of the corporation, shall, in case of insolvency, state an account of the corporate affairs and determine the necessity for and amount in which all stockholders in common shall contribute, the stockholder is bound upon the happening of the stated contingency.

In this view the proceedings had and taken in the courts of the domicil are binding, not by reason of the fact that they involved judicial action, but because they were expressly provided for in the stockholders' undertaking, as a condition precedent to his obligation to respond.

Similarly, if the law provides that upon the insolvency of the corporation and the ascertainment in the manner and by the stipulated tribunal, of the necessity for contribution by stockholders, a receiver shall be appointed, with authority to demand and collect such contribution, the latter's rights may be referred exclusively to the contract, and his right to sue thereunder may be predicated of the ordinary rights of a substituted or provisional promisee.

How far, then, may the provisions of the remedial law of the domicil be construed as entering into the stockholders' undertaking?

It has repeatedly been held that the law obligatory of the state of domicil is impliedly accepted and assumed by the stockholder in the act of taking or subscribing for the stock.

It is equally well established that where a statute creates a right, it may declare the purposes of its creation and provide the conditions upon which it may be made available.

In Pollard vs. Bailey, 20 Wall. 520, 526 this court said:

"The individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute. At common law it does not exist. The statute which creates it may also declare the purposes of its creation and provide for the manner of its enforcement."

Again, in Terry vs. Little, 101 U. S. 216, this court said:

"The first thing to be determined in all such cases is, therefore, what liability has been created. * * * * The statute which creates the liability may declare the purpose of its creation and provide, directly or indirectly, for its enforcement."

The conditions, embraced in the remedial laws, may, and ordinarily do, materially qualify the essential features of the liability of the stockholder, as illustrated in the case last cited. In that case a creditor of a corporation, organized under the laws of South Carolina, brought an action at law against a stockholder residing in North Carolina, in the Circuit Court of the latter state. This court, upon consideration of the local law, held that the action would not lie, saying:

"If the object is to provide a fund out of which all creditors are to be paid, share and share alike, it needs no argument to show that one creditor should not be permitted to appropriate to himself, without regard to the rights of others, that which is to make up the fund. * * * * It is clear that the obligation is one that may be enforced by the creditors, but as it is to or for all creditors, it must be enforced by or for all."

The conditions imposed by the local remedial laws were thus, in effect, held to qualify alike the obligation of the stockholder and the right of the creditor, and while it was not expressly stated that these laws of necessity entered into, and were to be incorporated as part of, the statutory contract, the conclusion of the court leaves no other available inference.

If the obligation may be qualified and the conditions upon which it is to be made available prescribed by the remedial law, it is impossible, for obvious reasons, to ascertain or interpret that contract without regard to all the several qualifying conditions.

There can be but one contract, the terms whereof are to be ascertained from a consideration of all the several laws legitimately bearing thereon and prescribing the conditions upon which the obligation on the one hand shall exist, and on the other may be asserted and enforced.

The liability cannot be separated from the essential conditions attached thereto, unless we are willing to commit ourselves to the anomalous conclusion that the stockholder of a corporation, by the mere act of taking or subscribing for stock, unequivocally accepts the provisions of the law imposing liability and repudiates the laws prescribing the conditions of that liability, and without which it has neither force nor effect.

It is the clearest violation of the principles, repeatedly stated by this court,—that a state may impose such conditions as it sees fit upon corporation and stockholder alike, which are acceded to by the acceptance of the charter, or the taking or subscribing for stock,—to claim that the limit of the powers of the state are exhausted, so far as stock liabilities are concerned, by imposing the liability, and that the conditions upon which the liability may be made available are a nullity, and binding only upon the stockholders of the state of organization.

Such a claim resolves itself to the absurdity of asserting that the entire substantive contract, referable to the domiciliary law, is to be differently interpreted as to different stockholders, and that as to one class the act of taking or subscribing for the stock operates as an assumption of all the conditions embraced in those laws, and as to another, an acceptance thereof only in part.

No such conclusion is sustainable, either upon principle or authority. The resultant stockholders' contract must, of necessity, be held and construed uniformly as to every stockholder, and in every jurisdiction where rights predicated of that contract may be invoked or asserted.

In construing such a contract, in Flash vs. Conn, 109 U. S. 371, supra, the court said:

"If this were a case arising in the State of New York, we should therefore follow the construction put upon the statute by the courts of that state. The circumstance that the case comes here from the State of Florida, should not leave the statute open to a different construction. It would be an anomaly for this court to put one interpretation on the statute in a case arising in New York, and a different interpretation in a case arising in Florida."

If it be contended that by a similar course of reasoning to that here adopted, it might be claimed that every stockholder, expressly or impliedly, consented to any known or recognized form of remedy prescribed by the local law, the answer is not difficult.

Remedial laws may relate to, or embrace, mere ministerial matters of form or procedure, or may be so far substantive in character as to qualify the right itself. With the former we have no present concern. It is settled that remedial laws, strictly speaking, have *ex proprio vigore* no extra-territorial force or effect.

Story on Conflict of Laws, §§ 556, 557.

The latter class, or those embodying substantive features qualifying the right itself, are uniformly treated and construed as part and parcel of the right, and as such follow it into every forum where it may be asserted.

Walsh vs. Mayor, 111 U. S. 31;
The Harrisburg, 119 U. S. 199;
Boyd vs. Clarke, 8 Fed. Rep. 849;
P. C. & St. L. Ry. Co. vs. Heim, 25 Ohio State, 629.

In many cases where the local statute has provided a several liability and corresponding legal remedy in favor of creditors and against stockholders, the courts have announced that the same remedy was available in any forum where jurisdiction of the stockholder could be had.

And similarly, where local statutes provided an equitable remedy, the remedy at law in a foreign forum has been held unavailable.

The stress laid in these cases on the term remedy, *as remedy*, has produced misconception and confusion in the authorities. The conclusions reached are correct, not because the remedy prescribed by the local law follows the liability, *as such*, but because in its substantive provisions it modifies the liability, and an assertion

of the latter in any other form would violate the essential conditions of the contract itself.

Where the local law provides a several liability and an independent remedy, in favor of any creditor and against any stockholder, the effect of the remedial provisions is to make a contract running from each stockholder to each creditor, and the ordinary and appropriate method of enforcement is open and available in every forum.

Where, on the other hand, the local remedial laws provide an equitable remedy, as shown by this court in Terry vs. Little, supra, the resulting conditions of the contract are modified, and that contract may not be asserted in a foreign forum, without regard to those conditions, or in a method which would violate their essential provisions.

This distinction was noted by Judge Lowell, in Dexter vs. Edmonds, 89 Fed. Rep. 467, 468, in the following language:

"The distinction between remedy and substantive right is incapable of exact definition; indeed, the difference is somewhat of a question of degree. * * * * Now the difference between a right vested in all creditors to proceed in one action against all the stockholders, and a right vested in each individual creditor to proceed against any individual stockholder is much more than a difference between two remedies; *it is a difference between two substantive rights.*"

There can be no doubt, therefore, that the substantive conditions of the remedial law enter into the contract of, and are contemplated by, the stockholder in the act of taking and subscribing for his stock. To this extent it is necessary to accord force and effect to the remedial statutes to insure uniformity of right in the creditors and equality of obligation in the stockholders.

Illustrations of the effect of such substantive remedial statutes in cases of corporate insolvency might be multiplied, but the following will suffice to demonstrate the correctness of the principles contended for above:

By the law relating to national banks, it is provided that, upon insolency, the affairs of the corporation shall be administered under the supervision of the Comptroller of the Currency. Upon the ascertainment of a deficit of assets the comptroller is authorized to make an assessment upon the stockholder. This remedial provision is held and construed to have entered into the stockholders' contract, and the action of the comptroller is held final accordingly.

Upon the happening of this remedial condition, and not otherwise, the liability of the stockholder is available for the benefit of creditors.

Under the laws of certain states, upon the insolvency of corporations, it is provided that certain designated officials shall succeed to the corporate rights for the purpose of rendering the assets available for all parties in interest. Such provisions are clearly remedial in nature, but are, nevertheless, construed as entering into the contract of corporation and stockholder alike.

Such was the case of Relfe vs. Rundel, 103 U. S. 222, wherein this court said :

"The appellees, when they contracted with the Missouri corporation, impliedly agreed that if the corporation was dissolved under the Missouri laws, the superintendent of insurance department of the state should represent the company."

Similarly, in Parsons vs. Charter Oak Insurance Co., 31 Fed. Rep. 305, where the court say:

"In other words, when the complainant in Iowa took out policies of insurance in a Connecticut corporation, they took the same subject to the provisions of such charter, and they impliedly agreed that in case of insolvency and dissolution under the laws of the State of Connecticut, they would be bound by the provisions of such law, so far as the same formed part of the charter of the company."

In Hawkins vs. Glenn, 131 U. S. 319, the finality of proceedings had in the courts of corporate domicil, assessing the stockholders for unpaid capital, was called in question, and it was held by this court that the ordinary proceedings contemplated by the local law, for the purpose of rendering available the funds liable to respond to the creditors' demands, were impliedly assented to in advance by the stockholders, this court saying:

"We think it cannot be doubted that a decree against a corporation in respect to corporate matters, such as making of an assessment in the discharge of a duty resting on the corporation, necessarily binds its members in the absence of fraud, *and that this is involved in the contract created in becoming a stockholder.*"

The general principle was thus expressed by this court in Railway Co. vs. Gebhart, 109 U. S. 531, as follows:

"Such being the law, it follows that every person who deals with a corporation impliedly subjects himself to such laws of the foreign government affecting the affairs and obligations of the corporation with which he voluntarily contracts as the known and established policy of that government authorizes."

Further illustrations of the effect of remedial statutes will appear when we come to consider the precedents relating to the enforcement of stock liabilities in foreign jurisdictions.

For present purposes we shall content ourselves with the general statement that, in ascertaining the contract of the stockholder under the Minnesota laws, regard must be had, not alone to the provisions of those laws imposing the liability, but as well to those prescribing the conditions upon which it may be made available.

These latter conditions were stipulated for by the stockholder in advance, and upon the happening thereof his liability existed not alone by force of the statute but by virtue of the provisions of his express contract.

Thompson on Corporations, Vol. 3, § 3059;
Carroll vs. Greene, 92 U. S. 509, supra.

II.

CONTRACT.—MINNESOTA LAWS.

The constitutional provision imposing the liability is found, as stated, supra, in Article X, Section 3, as follows:

"Each stockholder in any corporation (except those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him."

The remedial provisions are found in sections 17-22, inclusive, of the General Statutes of Minnesota, 1878, and the same in sections 5905-5911, inclusive, General Statutes of Minnesota, 1894, as follows:

"Section 5905. Whenever any creditor of a corporation seeks to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

"Section 5906. The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of

the property and debts due to and from such corporation, and shall appoint one or more receivers.

"Section 5907. If on the coming in of the answer or upon the taking of any such account it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed without appointing any receiver to ascertain the respective liabilities of such directors and stockholders and enforce the same by its judgment as in other cases.

"Section 5908. Upon a final judgment in any action to restrain a corporation or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof to be made among its creditors.

"Section 5909. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares held by him, or so much thereof as is necessary to satisfy the debts of the company.

"Section 5910. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases.

"Section 5911. Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and in default thereof to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment."

Of the constitutional provision, supra, the Supreme Court of that state say:

"Article X, Section 3, of the Constitution * * * * is self executing, and creates an individual liability on the part of the stockholder for corporate debts to an amount equal to the amount of stock held or owned by him. * * * * The obvious intention of the provision was to add to the ordinary liability of a corporation for its debts the individual liability of stockholders. * * * * In other words, the stockholders are liable not for

the stock, but in addition thereto for a sum measured by the amount of stock."

Willis vs. Mabon, 48 Minn. 140, cited by U. S. Supreme Court in Whitman vs. Bank, supra.

To same effect:

McKusick vs. Seymour, Sabin Co., 48 Minn. 158.

This liability runs directly to creditors, and is alone enforceable by them. It is not an asset of the corporation or enforceable by it or its successor in interest as receiver, assignee, or otherwise.

Thus the Supreme Court of Minnesota say:

"But the constitutional or statutory liability is directly to the creditors. The corporation cannot enforce it. It is no part of the corporate assets."

In re People's Live Stock Co., 56 Minn. 180-185.

To same effect Olson vs. Cook, 57 Minn. 552.

International Trust Co. vs. Loan & Trust Co., 65 N. W. Rep. 78.

The receiver of the corporation cannot enforce the liability.

Minneapolis Base Ball Co. vs. City Bank, 66 Minn. 441.

The liability runs to creditors equally and in common. Thus, as stated by the Supreme Court of that state in

Harper vs. Carroll, 69 N. W. Rep. 619:

"This liability produces only a limited fund, which a few of the creditors might exhaust, leaving nothing for the other creditors. Such a result is not in accordance with the character of the creditors' right. They are tenants in common in the fund, etc."

Again in Hanson vs. Davidson, 76 N. W. Rep. 254, the same court has said:

"The stockholders' liability is limited in amount, and is not to any particular creditor, but to all of the creditors of the corporation."

The liability as indicated by the remedial statutes, supra, is secondary, that is, conditioned upon and measured by the deficiency of corporate assets.

See also Olson vs. Cook, supra.

It embraces not only those stockholders who were such when the debt was created, but all who became such before the debt was liquidated. Thus, all stockholders in a corporation at the date of

its adjudication of insolvency are liable to all the several creditors existing at that time.

Gebhard vs. Eastman, 7 Minn. 40-44;
Olson vs. Cook, 57 Minn. 522;
First Nat'l Bank. vs. Winona Plow Co., 58 Minn. 167.

In the last case cited, the Supreme Court of Minnesota say:

"All those who are stockholders at the time the action is commenced are liable, although some of them were not stockholders at the time the corporate liability was incurred."

In this connection, and while construing the provisions of the local law, it will be noted that the state of facts alleged in the present bill is identical with that existing in the case of Olson vs. Cook, supra.

In that case, as here, the corporation had been proceeded against under the provisions of the general insolvency laws of that state, wherein the corporate assets had been sequestered and were in process of administration through a receiver appointed for that purpose by the court.

In that case it was held that the liability of stockholders was not available for creditors in the insolvency proceedings, but was to be availed of in an independent proceeding as provided by the statutes of that state, viz.: §§ 5905-5911, inclusive, General Statutes of Minnesota, 1894, quoted, supra.

By reference to these statutes it will be seen that their provisions are sufficiently broad to comprehend a general proceeding for the administration of the corporate assets. In this respect, however, their functions and purposes are supreceded by proceedings instituted against the corporation under the insolvency statutes, which similarly provide for the administration of the corporate affairs.

As held by the Supreme Court of Minnesota, in International Trust Co. vs. American Loan & Trust Co., supra,

"That an action under chapter 76 would not *per se* supercede a general assignment for the benefit of creditors, was impliedly held in Olson vs. Cook, 57 Minn. 552, and expressly held in Walther vs. Seven Corners Bank, 58 Minn. 434. The reason is that, so far as the corporate assets are concerned, exactly the same result can be accomplished by their administration by the assignee under the direction of the court as by the appointment of a receiver in an action under chapter 76."

In Olson vs. Cook, supra, that court, after referring to the general purposes contemplated in the statutes cited and quoted, supra, and to the fact that in so far as those statutes provide for administering the corporate properties, they are superceded by proceedings instituted under the insolvency laws, held, that notwithstanding these sections, in so far as applicable, were governing and determinative in the special proceedings brought by creditors to render available the liability of stockholders.

This, as heretofore stated, is the precise condition presented by the facts alleged in the present bill, and the cases cited are therefore determinative of the laws governing the rights of creditors and the obligation of the stockholders.

Eliminating therefore, from the provisions of the statutes quoted, those expressly applicable to the administration of the corporate affairs, and confining our consideration to those bearing upon the ascertainment and enforcement of the stock liability, it will be observed that the conditions prescribed embrace the usual prerequisites of an ordinary creditor's bill to sequestrate a fund.

They provide for the equal participation of all creditors to be brought in by order or be forever barred.

They provide for an accounting of the assets and debts, the ascertainment of the deficiency, if any, and the apportionment of such deficiency amongst all stockholders, according to their respective holdings, and exceeding in no event the maximum liability provided by law.

They provide further for the rendition of the appropriate decrees to effectuate the general purposes contemplated and for the appointment of one or more receivers.

In all essential particulars these provisions run parallel to the ordinarily prescribed rules of equitable procedure in analogous cases, and so they have been uniformly interpreted, both by the courts of that and foreign states, wherein their consideration has been involved.

In Harper vs. Carroll, supra, the Supreme Court of that state say:

"While such liability is several, it produces only a limited fund which belongs to all the creditors as tenants in common and must be enforced in equity."

In Hanson vs. Davidson, 76 N. W. Rep. 254, the same court say:

"Equitable considerations and the statutes require that an ac-

tion of the character described by chapter 76 be brought * * * * to determine the amounts remaining due to such creditors respectively, after the assets of the corporation have been exhausted, thereby providing a basis for determining the extent of the liability of the respective stockholders."

In Elkhart National Bank vs. Northwestern Guaranty Loan Co., 87 Fed. Rep. 252, the Court of Appeals of the Third Circuit, referring to the same statutes, say:

"The plaintiff says in the brief furnished us that 'the laws of Minnesota impose the ordinary stockholders' liability and prescribe an essentially equitable remedy for its enforcement.' This is true; and the remedy seems to be fully adequate to secure the creditors' interests under all circumstances. The laws of Minnesota impose on such stockholders a personal liability equal to the par value of the stock held, and render them subject to call for payment of so much thereof as may be necessary to pay creditors after the company's assets have been exhausted. To enable the court to make a decree, it must take an account, determine the amount of assets, the extent of the indebtedness * * * * and thus determine what each should contribute, if contribution is found to be necessary."

For reasons heretofore stated, the conditions of these remedial laws necessarily enter into the terms of the stockholders' undertaking.

It could not, for instance, be contended that a single creditor could predicate a right against a single stockholder in any jurisdiction whatsoever, in view of these statutes, without violating the substantive purposes and conditions therein expressed.

Terry vs. Little, supra.

The precise nature of the contract thus evidenced may be ascertained from a consideration of the obvious purpose and policy of these laws, as interpreted by the local courts and the general principles established and applied in analogous cases.

III.

OBJECT AND PURPOSE OF THE REMEDIAL STATUTES.

The primary object obviously in view in the laws in question was securing to the creditors a fund additional to the corporate resources for the payment of their indebtedness.

The secondary purpose is equally clear to establish a uniform system for rendering this fund available and insuring its administration in such manner as to at once apportion the benefits and equalize the responsibilities.

Having regard to these, it is clear that the statutes aimed at reserving to the courts of the state, having jurisdiction of the corporation, the power to entertain the proceedings requisite for the realization and administration of this quasi asset.

So far as precedents are to be found, it must be conceded as established that under such statutes wherein the liability of stockholders is secondary, dependent upon and measured by the deficiency of corporate assets and conditioned upon the requisite accounting to establish these facts, no court outside of that of the domicil is possessed of requisite power to exercise jurisdiction in there respects.

State Nat'l Bank vs. Saward, 86 Fed. Rep. 45, affirmed on Appeal, 91 Fed. Rep. 443;

Elkhart Nat'l Bank vs. Northwestern Guaranty Loan Co., supra;

Post vs. Railroad Co., 144 Mass. 341;

Cleveland, etc., Railway Co. vs. Kent, 34 N. Y. Suppl. 427.

In Post vs. Railway Co., supra, the Supreme Court of Massachusetts, speaking through Chief Justice Field, said of such a suit:

"It is a suit against a foreign corporation which involves the relation between it and its stockholders, and in which complete justice can only be done by the courts of the jurisdiction where the corporation was created. * * * * If an assessment is to be laid upon the members or stockholders, or contribution enforced from them according to the law of the state under which the corporation is created, the courts of that state alone can afford complete and effectual relief."

The effect of such statutes is, therefore, to invest in the courts of the state of domicil, original jurisdiction in the premises, to perform the requisite functions thereby contemplated, to render the fund available.

This is the holding of the Supreme Court of Minnesota, construing these statutes and the jurisdiction intended to be exercised by the courts of that state thereunder.

In Hanson vs. Davidson, supra, that court say:

"The action required to be brought by chapter 76 is the original action for the sequestration and distribution of the fund to be derived from the stockholders' liability."

In the same case the court further states, as the object of the action, the determination of the amounts due creditors after exhausting the assets of the corporation, thereby providing a basis for determining the necessity for and amount in which the stockholders shall be compelled to contribute.

The stockholders acquired their respective holdings subject to these conditons, and therefore impliedly agreed in case of insolvency that the courts of corporate domicil should, in the manner and proceedings provided by those laws, take the several preliminary steps necessary to ascertain the amount in which the fund involved in the statutory liability should be enforced. Upon and subject to this condition, they assumed liability, and, in the absence thereof, such liability could not be successfully asserted against them in any tribunal whatsoever.

This was the principle of decision applied by the Court of Appeals of the First Circuit in one of these same cases growing out of the same insolvency and based on the same laws, in Hale vs. Hardon, 95 Fed. Rep. 447, wherefrom we excerpt at some length:

"The ascertainment of the debts and assets of the corporation and the judgments against the resident stockholders in the parent forum are in no sense personal judgments against the non-resident stockholders, but are necessary preliminaries to a recovery in an extra-territorial proceeding against the non-resident stockholders. To enforce extra-territorially the individual stockholder liability created by statute, and to entitle the creditors, or the parties representing them, to judgment, it is incumbent upon plaintiffs to show that the ascertainments intended by the statute have been made. * * * But such constitutional and statutory liability in contemplation of law is conditioned upon certain equitable proceedings, which, speaking generally, mean proceedings to ascertain all the indebtedness, property and assets of the corporation, to pay out of the assets, if possible, and if not pos-

sible, to pay all, to ascertain how far the assets will go, and the relation which the remaining indebtedness sustains to the maximum liability limit of the stockholders, or perhaps of all solvent stockholders. And in order to recover upon the liability it must be shown that the contemplated statutory condition has been performed. * * * * As to these ascertainments in which the corporation is interested, in a proceeding in which the corporation or its successor is a party and for such purposes representing the stockholder, who is a part of the corporation, the stockholder is bound by the adjudications in Minnesota. * * * * The Minnesota law was a part of the contract which resulted from the defendant becoming a stockholder, and as a stockholder he is bound by such equitable and legal proceedings in the local courts, and such ascertainments as to purely corporate matters as the statute contemplated. As a part of the implied contract, the stockholder agreed that the ascertainments, which the statute intended and which the situation resulting from insolvency required, should be made in accordance with the usual and ordinary course of legal and equitable procedure in that state. It was not understood that the statutory liability should have no force unless the non-resident stockholder was made a party to the proceedings as to corporate affairs which the statute intended and expressly provided should be had in the District Courts of Minnesota. Making a non-resident stockholder a party to the contemplated legal and equitable proceeding for such purposes was a thing impossible, and a construction requiring it would render the statutory liability inoperative at its inception. * * * * We have no hesitation in holding that the findings and decree of the Minnesota court as to the amount of corporate indebtedness, and the amount of indebtedness proven or established in the parent proceeding, and that the findings and decree as to the rights of the creditors are evidence in the proceeding at bar against a stockholder, although no service was made upon him, or notice given of the proceeding in Minnesota; and we have no hesitation in saying that the doctrine is established upon principle and by an overwhelming weight of authority (which, among other considerations, involves the idea of the constitutional guaranty that full force and credit shall be given to the judicial proceedings of every state, and also of enforcement according to the law of the home forum), that such findings, judgments and decrees are conclusive, in the absence of fraud or collusion.

* * * * The fact was also found below that the defendant was a stockholder at the date of the adjudication of the insolvency of the corporation; and as our conclusion is that the proceedings in Minnesota were sufficiently comprehensive as to domiciliary adjudications and ascertainments, and such as the constitution and statutes of Minnesota contemplated, and such as the statutes required, it follows that the defendant's liability results by force of the constitutional provision and the statutes in respect to which he, by implication, contracted by becoming a stockholder,

and that the plaintiff is entitled to recover, provided he is entitled to maintain his action in this jurisdiction as a receiver, or representative of the creditor interests in aid of the parent proceeding in Minnesota."

One of the most comprehensive statements of the rule is found in a recent decision of the Supreme Court of Massachusetts in Howarth vs. Lombard, 175 Mass., 570, wherein the court say:

"In the case at bar a receiver of the Traders' Bank has been appointed, the amount of its assets and liabilities has been judicially determined, the necessity for an assessment upon stockholders, and the amount of the required assessment have been ascertained, an assessment upon all stockholders has been made. * * * * The question arises, how far these proceedings in the Court of Washington are binding on the defendant. The stockholders must be assumed to have understood the statute from the first, as it has been construed by the court. They must be presumed to have agreed that on the insolvency of the corporation a receiver might be appointed by the court, and the affairs of the corporation administered, and the amount of its assets and liabilities determined, and the deficiency ascertained under the order of the court, and an assessment to meet this deficiency made ratably upon all who were then stockholders. This is the only proper way of accomplishing the object of the statute, and the statute, as construed by the local courts, means this as plainly as if every part were expressed. Under the statutes the stockholders impliedly agreed that if their subscriptions were in part unpaid when they were needed for creditors, they would pay the balance to the corporation or its legal representative, and that if more was needed they would also pay their proper share, up to the amount of their subscriptions, to the trustee of this additional fund, for the benefit of creditors. The determination of the questions involved is a part of the proceedings of the court in the administration of the affairs of a local insolvent corporation. The Court of Washington, acting under its general authority in such administration, is the only tribunal which has jurisdiction to determine the amounts due creditors, and to collect and apply the assets of the corporation. The undertaking of the stockholders relates directly to the payment of amounts so to be ascertained. The ascertainment is like a common case of a judgment against a corporation, which is binding on stockholders. The members of such corporations, as well as the corporations themselves, are within the jurisdiction of the local courts, so far as is necessary for the determination of the rights and liabilities of the corporation and its members among themselves. In reference to this kind of liability, such decisions and orders are binding on stockholders who are not before the court otherwise than by their membership in the corporation."

These principles are fully recognized by the Supreme Court of Minnesota in Hanson vs. Davidson, supra, wherein the purposes of the statute and the effect of the proceedings on stockholders is thus stated:

"Equitable considerations and the statute require that an action of the character prescribed by chapter 76 be brought by and on behalf of all the creditors, and against the corporation and all the stockholders of whom the court has jurisdiction, to determine the amount remaining due to such creditors, respectively, after the assets of the corporation have been exhausted; thereby providing a basis for determining the extent of the liability of the respective stockholders. The judgment in such original action determining the amount of the corporate debts remaining unpaid is binding on all of the stockholders, whether parties to the action or not, unless impeached for fraud. A judgment against the corporation is in effect a judgment against the stockholders in their corporate capacity. They are represented by the corporation in this action. In principle, there can be no difference in this respect between an action to enforce an unpaid subscription, and one to enforce a stockholder's liability. The action required to be brought by chapter 76 is the original action for the sequestration and distribution of the fund to be derived from the stockholder's liability, and the decree entered therein is a final and conclusive determination of the amount (unless impeached for fraud) for which the stockholders are liable, not exceeding the maximum limit of liabilities as fixed by law. As the amount and par value of the stock issued and outstanding is a matter of record, and readily proven in any action, there is nothing to prevent the prosecution, after such decree is entered, of an ancillary action in another jurisdiction by the receiver appointed to collect and distribute its funds arising from stockholders' liability in the original action, or by any other party or person who may be appointed by the court for that purpose, against any stockholder who was not made a party to the original action, to collect from him the amount of his liability on account of the debts of the corporation, for the benefit of all the creditors."

The purposes of the statute and the effect of the contract therein involved might be sufficiently rested upon the decision last referred to, in view of the familiar principle that the construction by local courts of their own statutes is to all practical intents and purposes conclusive.

As said by the Supreme Court of Maine, in a recent decision involving these same statutes and the enforcement of a liability similar to that at bar, referring to and citing Hanson vs. Davidson, supra:

"In considering the scope and purpose of a statute, regard is properly had in the first instance to the construction placed upon

it by the courts of the state in which it was enacted, this being deemed a part of the law itself."

Childs vs. Cleves, 95 Me. 498.

The case of Childs vs. Cleves, supra, involved practically the same questions presented by the case at bar, except that in that case the liability involved, instead of being predicated of the general constitutional provision, was based on statutes of the State of Minnesota, specially applicable to stockholders in banking institutions.

The remedial statutes and method of enforcement of the liability, so far as affected by the Minnesota laws, is identical with the case at bar and the principles involved the same. In that case the court say:

"The defendant claims that the proceedings under the Minnesota statute, instituted by the creditors, and which form a basis of this action, were essentially an action against the stockholders to enforce their individual liability and not an action against the corporation, and therefore *res inter alios* and of no effect against this defendant, a non-resident stockholder, who did not become a party to the action. This question has been the subject of frequent examination in recent years, in both the Federal and State Courts, and the great weight of authority in both jurisdictions is undoubtedly against the defendant's contention."

After referring to the general rule quoted, supra, as to the effect of the local decisions as regards local statutes, and citing Hanson vs. Davidson, supra, and other Minnesota cases, the court continued:

"But the principle that the corporation represents stockholders, and that a judgment against the corporation is conclusive against the stockholders, with respect to corporate matters, may properly be termed familiar and well settled. It is established beyond question by both state and federal authority."

Similarly see Tompkins vs. Blakey, 49 Atl. Rep. 111.

These precedents are sufficiently decisive of the effect of the remedial laws, so termed, on the stockholders' contract and establish the finality of the proceedings and ascertainments of the courts of the domicil upon contractual principles.

Before leaving this branch of the case, it may serve to elucidate the propositions involved to explain and answer some of the theories advanced in opposition to the principles thus stated.

IV.

OPPOSING THEORIES.

Much needless argument has been resorted to in this class of cases, questioning the finality of the proceedings of the courts of corporate domicil as against non-resident stockholders. The "want of due process of law" theory has in the development of the law successively assailed proceedings against stockholders of national banks based on the comptroller's assessment, those for the recovery of unpaid capital based on the assessment of the court of principal jurisdiction, and those brought to recover the superadded stock liability, where the same is predicated of a local judgment.

This supposed defense has been effectually disposed of by the well settled principal that "a stockholder is so far an integral part of the corporation, that, in view of the law, he is privy to the proceedings touching the body of which he is a member."

Hawkins vs. Glenn, 131 U. S. 329;
Glenn vs. Liggett, 135 U. S. 544;
Sheafe vs. Larrimer, 79 Fed. Rep. 923;
Lehman vs. Glenn, 27 Ala., 626;
Semple vs. Glenn, 91 Ala. 253;
Great Western Telegraph Co. vs. Gray, 122 Ill. 638;
Van Derwerken vs. Glenn, 85 Va. 12.

In these cases, class by class the fallacy of "due process" has been disposed of until it has taken its final desperate stand in cases similar to that at bar.

In the history and development of the general principles noted above, as the various classes of cases have successively arisen, each has found some supposed technical distinction, rendering the principles referred to inapplicable.

But the claimed distinctions which seek to deny the application of the settled principles do not exist, and the same reasons which have actuated the courts in the others may be safely relied on here.

Bearing in mind the stockholders' contract, if the terms of that contract provided that the necessity for and amount in which the

stock liability should be enforced, should be determined in a given manner, he is bound by that condition, and upon its performance he must respond accordingly. The fact that the condition was the finding of a court is wholly immaterial. It would have been precisely the same had the designated tribunal been some ministerial officer.

It is not, therefore, a question of *due process of law* at all, but whether the prescribed conditions, upon which the stockholder expressly assumed liability, exist.

It has, however, in seeming inability to grasp basic principles and to comprehend the reasons underlying the development of the law in this class of cases, been strenuously asserted that the courts have never gone further than to hold the stockholder bound by matters relating to what are termed "corporate rights or duties."

From this it has been argued that, as this liability is in nowise related to a corporate duty but is exclusively a matter between stockholders and creditors, the principles applied in analogous cases are inapplicable here.

This reasoning is purest sophistry, and evinces a disposition to beg the question.

How can the court bind the absent stockholder in matters respecting "corporate duties," whatever this term may mean Simply because such power was reserved to the state by virtue of express statute, or the settled principles of equitable administration, in either of which cases it must be held to have been within the contemplation of the stockholder, and as, therefore, a constituent element in his contract.

But it is said, having regard to the settled construction of the Minnesota statutes adopted by its courts, previous to the decision in Hanson vs. Davidson, supra, resident stockholders must be made parties to the suit to enforce the liability, and that, therefore, to hold the non-resident bound by the proceeding, discriminates against him, it makes one remedy, so to speak, as against the resident and another against the non-resident stockholders.

This is the gist of the dissenting opinion in Hale vs. Hardon, supra.

When the non-resident stockholder accepted stock, he voluntarily assumed liability in common with his fellows to the creditors of the corporation in case of insolvency. This liability, common to all, and for the equal benefit of the several creditors, pre-

supposed the necessity of jurisdiction vesting in some tribunal to ascertain the necessity for its realization. The statutes provided what that tribunal should be, and the manner, to wit, by an accounting of debts and assets, in which this necessity should be ascertained.

These things must necessarily be held to have been within his contemplation, and thus within the contract assumed in taking the stock.

It rested with the courts to determine in matters of form how this proceeding should be inaugurated and carried on to best accommodate the ends of convenience and justice. They provided that the stockholders should be brought into the original proceeding. The statutes make no such provision. The court might as well have provided that the suit should, in the first instance, bring in only the corporation and its general receiver, leaving the enforcement as against stockholders to auxiliary proceedings. It saw fit to adopt the former, but its functions were thus in nowise impaired, nor its jurisdiction lessened, so far as the consummation of the purposes of the law was concerned.

The reasoning of the court in the dissenting opinion noted, wholly loses sight of the distinction between ministerial matters of procedure and substantive matters of jurisdiction.

In the matter of form of procedure the courts of that state have adopted rules consonant with and calculated to best subserve the interests of the parties.

In other words, in matter of form, the court has superimposed upon the statutes proceedings constructed along the lines prescribed by rules of equity. The statutes referred to do not undertake to dictate or provide in this respect.

As said by the Supreme Court of Minnesota, in State vs. Bank of New England, 56 N. W. Rep. 575:

"Chapter 76 provides but a mere skeleton of procedure for the action authorized by it. Its provisions are very meagre. * * * * The action is given for a remedy to which the creditor is entitled as a matter of right, and which does not rest in the discretion of the court. It is the duty of the court to make the action effectual and to exercise for that purpose the powers vested in it."

This is true so far as ministerial matters relating to procedure are concerned. It cannot, however, having any regard for the provisions of the statutes themselves, be held or claimed that in substantive matters they fail to invest the court with all the necessary reserved powers and jurisdiction required to be exercised,

to reach every fund available for creditors on the insolvency of the corporation.

By prescribing matters of form, the courts have in nowise limited their statutory jurisdiction or the effect to be accorded the necessary judgments and decrees rendered by them to carry out the obvious intent and purpose of the statutes themselves.

Making resident stockholders parties, in nowise affects the finality of the proceeding as to non-residents.

Thus, as said by Judge Thompson, in Vol. 3, Thompson on Corporations, § 3492, in speaking of the methods of procedure in analagous cases:

"The other is the course suggested by the preceding section, to bring the suit on behalf of the creditors, to procure the appointment of a receiver, to have an account taken and stated, and an assessment upon all the shareholders ordered, and to enforce that assessment by supplementary actions brought by the receiver wherever the shareholders may be found. Where the latter course is taken, no objection is perceived to mingling the two kinds of procedure, so far as to make such stockholders as may be found within the jurisdiction, parties defendant, and to rendering decrees against them *in personam*, without requiring the receiver to bring separate actions at law against them, which practice is sanctioned by the decisions first above cited. This would leave him free to bring actions at law against such stockholders as might reside in other jurisdictions, as was done in the Glenn case."

These conditions presented to the foreign stockholder were fully embodied in the statute. He knew that in impounding the fund to be raised from the stock liability, the court would proceed with his presence, if he saw fit to appear, otherwise without him. If any discrimination resulted, he necessarily, therefore, accepted the same voluntarily in advance.

It has been contended that the holding of the Minnesota court in Hanson vs. Davidson, supra, overruled previous decisions of that state interpreting the same statutes, notably Allen vs. Walsh, 25 Minn. 543, and subsequent cases following.

The decision in Hanson vs. Davidson thus refers to and comments on this case:

"A decision upon this claim of the defendant involves a consideration of the nature of the liability of stockholders for the debts of the corporation, the method of enforcing it, and just what was decided by the case of Allen vs. Walsh. In that case, which was an action at law by a creditor, for his sole and exclusive benefit, against a single stockholder, to enforce his individual liability, it was correctly held that the action could not be maintained, and that the plaintiff's remedy was an equitable action, in

behalf of himself and all other creditors, against the corporation and its stockholders, wherein the debts of the corporation must be determined, and, after exhausting the corporate assets, the liability of stockholders for the deficiency might be adjudicated and enforced pursuant to the provisions of chapter 76, General St. 1878 (chapter 76, Gen. St. 1894). It was not, however, decided in that case that if a stockholder was omitted from such original action because the court could not acquire jurisdiction of him, or for any other cause, the liability could not be subsequently enforced against him by bringing him or his property into the original action, if found within the jurisdiction of the court, or by proceeding against him alone in an action ancillary to the original action in any other jurisdiction where he might be found, if the comity of the sister state would permit it. Neither is there anything in the nature of the stockholders' individual liability, or the method of enforcing it, to prevent the enforcement of the liability against a stockholder so omitted from the original action. The constitution of the state imposes the liability on all corporations, except those organized for carrying on any kind of manufacturing or mechanical business; and it follows that every person who becomes a stockholder in a corporation organized under our laws contracts, with reference thereto, and with the creditors of the corporation, that he will be liable for its debts, to the limit fixed by our constitution and statutes."

The criticisms which have been preferred on Hanson vs. Davidson, wholly lose sight of the fact that that was the first case in which the question of the jurisdiction of the courts of that state, under the statutes thereof, to deal with or effect omitted or non-resident stockholders had ever been called to its attention. In all the several previous decisions the questions presented had been confined to determining (1) Whether the statutes of that state contemplated a several remedy in favor of creditors, to be pursued at law, or a joint right to be availed of in equity, and (2) Questions relating to resident stockholders before the court in the pending proceedings.

In the previous cases of Clark vs. Opera House, 59 N. W. Rep. 623, and Bank vs. Plow Co., 58 Minn. 167, the effect of the omission, insolvency, or non-residence of stockholders, so far as these facts affected the question of amount of liability of stockholders before the court was referred to, but the decisions were expressly confined to the phase thus presented.

In Harper vs. Carroll, 69 N. W. Rep. 610, the court's attention was first called to the effect of local proceedings as releasing stockholders, not made parties thereto, upon the claim that the liability was joint.

Answering this, the court say:

"The stockholders' liability is several, not joint; and a judgment against only a part of the stockholders within the jurisdiction does not have the effect of releasing the others."

In Hanson vs. Davidson, the question was squarely presented upon a state of facts, necessarily demanding the determination of the finality and effect of the proceedings had in the original cause as against an omitted or non-resident stockholder. In that case, after a final decree in the original suit, property belonging to a non-resident stockholder was found within the state and attached in an ancillary proceeding.

It was claimed by the defendant that the liability created by the law of that state was joint, and the rights of creditors merged in the judgment theretofore rendered. The result of this defense has already been indicated in excerpts from the decision.

The criticisms of Hanson vs. Davidson further lose sight of the fact that the construction and interpretation of the jurisdiction of the court of domicil and of the statutes in question, there adopted, is in precise accord with the principles which modern rules and practice of equity have uniformly settled.

In all the various litigation arising upon these statutes, with the exhaustive ingenuity exercised therein for conjuring up technical objections to the enforcement of the right, no claim has ever yet been made that these statutes are, in any substantial particular, inconsistent with the ordinary principles of equity procedure prescribed for rendering the assets and quasi assets of insolvent corporations available for creditors.

As an abstract proposition therefore, it appearing that the liability created by these laws contemplated a fund for creditors equally and in common, the courts of every jurisdiction, having any regard for the obligation of a contract, must of necessity, with or without consideration of these statutes, and with or without regard to the Minnesota precedents, have sanctioned the original proceeding by accounting in the local courts having jurisdiction of the corporation, followed by auxiliary proceedings thereon predicated in the jurisdiction where stockholders reside.

Hawkins vs. Glenn, supra;
Terry vs. Little, supra;
Bank vs. Franklin, supra.

The result of the decisions of the Circuit and Circuit Court of Appeals of the Third Circuit in these cases is substantially as fol-

lows: You cannot proceed by an original bill here, because this court has no jurisdiction of the corporation, an indispensable party to the accounting requisite for the determination of the stockholders' liability; you cannot proceed in an auxiliary suit, because the courts of Minnesota have no jurisdiction to make an accounting and assessment on residents of this state, not before that court; it may be possible that you can find some other remedy, but of that we express no opinion.

By such sophistries one of the most just and equitable forms of stock liability known to the law has been absolutely barred from enforcement in those courts.

Of the liability created by these laws, the Supreme Court of Maine, in the recent case of Childs vs. Cleves, have said as follows:

"The Minnesota statute authorizing the collection from stockholders of only so much as may be necessary to satisfy the debts of the corporation, and requiring a pro rata distribution of it among all the creditors, is seen to be free from the less equitable features of those statutes which authorize a single creditor, without the pro rata assessment, to maintain an action against a single stockholder for his own benefit, and not for the benefit of all the creditors."

The spirit of manifest and technical opposition indicated by the decisions of the court in the circuit in question stands out in marked contrast with the holding of the Supreme Court of Massachusetts in Bank vs. Ellis, 172 Mass. 47, quoted and approved by the Supreme Court of Maine in Childs vs. Cleves, supra, as follows:

"It certainly concerns the due administration of justice that all stockholders, wherever they reside, should be compelled by proceedings somewhere, to perform the statutory obligations towards creditors of the corporation which they have assumed by becoming stockholders."

Under the most varied provisions of statutory liability and providing diversified remedies for their enforcement, the great and almost uniform holding of the later precedents recognizes the right of enforcement in foreign tribunals.

In addition to cases cited, supra, see

Sheafe vs. Larimer, 79 Fed. Rep. 921;
Howarth vs. Ellwanger, 86 Fed. Rep. 54;
Bank vs. Ellis, 166 Mass. 418;
Howarth vs. Angle, 162 N. Y. 179;
Ferguson vs. Sherman, 116 Cal. 175;
Bank vs. Lawrence, 117 Mich. 673;
Bell vs. Farwell, 176 Ill. 498;

Aldrich vs. Anchor Coal Co., 24 Oregon 39;
Hall vs. Klunk, 25 S. C. 352;
Guerney vs. Moore, 131 Mo. 650;
Cushing vs. Perot, 175 Pa. 66.

The principles thus established may in conclusion be stated as follows.

The power reserved to the state, by virtue of these statutory provisions, and the right to render available the fund in the manner and through the agencies designated, is an essential and substantive condition attached by the state to its grant, and as such is as much a part of the stockholders' undertaking as the condition involved in the statute or constitutional provision imposing the liability. It rested exclusively with the state to determine these conditions. It might have provided with equal force and effect that the liability should be primary, and, as such, a part and parcel of the corporate assets; it might have provided that the fund should be secondary, but still available in the general insolvency proceedings on *ex parte* application, and assessment so termed by the court, to be sued for and recovered by the corporate receiver. It might have delegated the functions necessary to be exercised in determining the conditions upon which, and the amount in which, the fund should be made available, to some ministerial officer, as has been done by the federal statutes in the case of national banks. The material point is not the particular manner or method prescribed, for that was wholly discretionary in the state, but the fact that it has prescribed *the conditions upon which, and the agency through which*, the necessity for and amount in which this fund is to be made available, should be determined.

Having done this, the conditions and the agency designated are stipulated and agreed upon as between the state, the stockholder and creditor in advance. These are the determinative conditions of the stockholders' undertaking, without which it is arbitrary, meaningless and devoid of potency.

V.

DENIAL OF DUE FAITH AND CREDIT TO THE JUDICIAL PROCEEDINGS OF THE STATE OF MINNESOTA.

Within the principles announced by this court in Hancock National Bank vs. Farnham, 176 U. S. 640, the denial of the efficacy to the proceedings of the Minnesota court was a denial of "due faith and credit" within the inhibition of Section 1, Article 4, of the Constitution of the United States.

As heretofore shown under the decisions of the courts of the State of Minnesota, the decree determining the necessity for and amount in which all stockholders shall be assessed, is conclusive and binding in the absence of fraud on all stockholders, whether before the court or not.

This being the interpretation of the effect of its own decree within that state, it was under the principles announced by this court in the case cited, entitled to the same effect, and subject to be met only by the same defenses, as would be available against it in the State of Minnesota.

See also Great Western Telegraph Co. vs. Purdy, 162 U. S. 329.

As the effect of this decree will call for examination when we come to the question of jurisdiction, we reserve its further consideration to that place.

VI.

CAPACITY OF PETITIONER TO SUE.

Underlying the modern precedents heretofore considered, will have already been observed the one essential element of uniformity in the matter of enforcement of these liabilities.

Without violating the law of the forum, manifest regard has been paid the spirit and purpose of the domiciliary law, and that

remedy sustained for the latter's enforcement, which harmonized with its spirit and insured equality of administration.

It has long been recognized that where such liability contemplates the creation of a fund, the purposes in this regard may be best accomplished through the medium of a receiver.

Vol. 2, Mor. on Corp., § 902.

In some jurisdictions the administration of this quasi asset is conferred upon the general receiver of the corporation, but by the clear weight of authority, unless power in this respect be conferred by special enactment, the general receiver has no interest in the right in question.

Ochiltree vs. Railway, 21 Wall. 249;
Vol. 2, Cook on Stocks & Stockholders, § 218;
Vol. 2, Mor. on Corp., § 849;
Gluck & Becker, Rec. (2nd Ed.), 266;
Bank vs. Ellis (Mass.), supra;

The laws of Minnesota provide in such cases for the appointment of a special receiver as representative of creditors in respect to this special liability.

Hale vs. Hardon, supra;
Childs vs. Cleves, supra;
Hanson vs. Davidson, supra;

This is the status of petitioner under a decree of the domiciliary court authorizing and directing the enforcement of the liability.

At the threshold of the present case, petitioner has been met with the stereotyped objection that as a foreign receiver he could not be accorded standing in any jurisdiction outside that of his appointment.

The foundation for the supposed rule denying extra-territorial rights to a foreign receiver, statutory or judicial, has been in the earlier cases referred to two propositions, (1) A disinclination to accord force and effect either to foreign laws or judicial proceedings, and (2) A tendency of discrimination in favor of the citizens of the state of forum.

The early case of Booth vs. Clark, 17 How. 322, has been frequently cited as justifying one or both the grounds stated. Assuming without conceding, that there is any foundation for attempting to extend the principles announced in that case, confined

as it was to the rights of individuals and invoking the aid of a court of equity with the appointment of a receiver for the adjustment of such rights, to the case of a corporation, which is created by law and subject to all the several conditions imposed by law, including those relating to the administration of its affairs in case of insolvency, it is nevertheless confidently asserted that the basis of decision in Booth vs. Clark, predicated as was that case of a denial of all comity between the states, has been so far removed by the now thoroughly established doctrines of comity sustained by nearly every state in the Union, as to deprive the conclusions there announced of the force otherwise attributable thereto.

The underlying principle of that case is apparent from the following excerpt therefrom:

"That comity has not yet reached our courts. * * * * Such being the rule in the American courts in respect to foreign assignments in bankruptcy and in respect to such assignments as may be made under the insolvent laws of the states of the United States, there can be no good reason for giving to a receiver appointed in one of the states under a creditor's bill a larger comity in the courts of the United States or in those of the states or territories."

If the principle of comity is decisive and controlling in this regard, the question must of necessity be one of local law, referable to the policy of the state of the forum, as indicated either in its legislative enactments or judicial decisions.

This view was indicated by this court in Cole vs. Cunningham, 133 U. S. 107, 126, and Reynolds vs. Alden, 136 U. S. 348.

But whether referable to local or conceived general rules, it must now be conceded that, by the almost unanimous concensus of opinion, subject to certain well recognized exceptions, foreign standing is accorded statutory receivers, and it is believed that no substantial grounds now exist for denying similar standing to receivers appointed by courts of equity.

This conclusion is clearly indicated by the later decision of this court in Davis vs. Gray, 16 Wall. 203 219, as follows:

"In the progress and growth of equity jurisdiction, it has become usual to clothe such officer with much larger powers than were formerly conferred. In some of the states they are by statutes charged with the duty of settling the affairs of certain corporations when insolvent, and are authorized expressly to sue in their own names. * * * * In all such cases the receiver is the right arm of the jurisdiction invoked. As regards the statutes, we see no reason why a court of equity in the exercise of its

undoubted authority may not accomplish all the best results intended to be secured by such legislation without its aid."

The modern rule sustained by the great weight of authority and applicable in this regard, indiscriminately to statutory as well as receivers of courts of equity, has been thus expressed:

"The great weight of authority in this country at the present time may be stated in general terms as follows:

"First—The receiver, as a strict matter of right, by leave of court, may sue and defend in all courts of the state where he is appointed.

"Second—He will be permitted to sue and defend, as foreign receiver, in all courts of other states than that in which he is appointed, on the principles of comity, except where the rights of citizens of the state of the forum are prejudiced thereby, or where it would be in contravention of the policy of such state."

Smith on Receiverships, 167 (f), and cases.

See also,

2 Beach Mod. Eq. Pr., § 747;
Beach on Rec., § 682;
High on Rec. (2nd Ed.), § 241;
Gluck & Becker on Rec. (2nd Ed.), 34 *et seq.*, 222;
Vol. 20, Am. & Eng. Ency. of Law, 244.

That the general rule of comity prevails in the Commonwealth of Pennsylvania is settled by Bagby vs. Railway, 86 Pa. St., 291; that the demand asserted is not opposed to any policy of the local law of that Commonwealth is sufficiently indicated by

Aultman's Appeal, 98 Pa. 505;
Cushing vs. Perrot, 175 Pa. 66.

With a view of bringing this case within the exception to the general rule stated, it was asserted in the demurrers that the bill and exhibits disclosed that there were local creditors to whose demands the liabilities of the defendants should primarily respond.

In the light of established principles this claim is utterly futile. Neither local creditors nor any other creditors may avail themselves of this liability or assert any rights whatsoever therein, otherwise than on full compliance with the several conditions of the law of the domicil.

Terry vs. Little, 101 U. S. 216.

The rights of creditors in this fund are not attributable to any remedial laws of the Commonwealth of Pennsylvania. Local

creditors have no other or different rights than any others, and all are referable in this regard to the laws of the domicil prescribing equality for creditors in common.

As well said in this regard by the Supreme Court of Maine, in Childs vs. Cleves, supra:

"It is apparent that no rights of domestic creditors can intervene, since the law creating the stockholders' liability declares it shall be enforced for the benefit of all creditors of the corporation."

The receiver appointed for this special fund and to render that fund available, obviously bears the same relation thereto as the receiver of the corporation to the general assets and properties of the body corporate, subject to his administration. The purpose of such receiver is obviously a matter of necessity as well as convenience, and the power of appointment may be referred both to the express provisions of the Minnesota statutes and the general equity powers exercised by courts of chancery in analagous cases.

Hale vs. Hardon, supra;
Childs vs. Cleves, supra;
Zieverink vs. Kemper (Ohio), 34 N. E. Rep. 250.

Such an appointment is obviously calculated to effectuate the general objects and purposes, in that without it, no practical means has ever yet been suggested for insuring harmony in the administration and efficiency in the proceedings contemplated.

The Supreme Court of Maine, in Childs vs. Cleves, supra, said in this regard:

"The practical result would be that, unless the plaintiff receiver appointed by the court under authority of the statute for the express purpose of 'instituting all necessary actions and proceedings for the purpose of collecting from non-resident stockholders' any sums due for the benefit of all creditors can be permitted to maintain a suit for that purpose in extra-territorial jurisdictions, upon the principle of comity, or otherwise, the remedy provided by the statute would be a barren and inoperative one except as against the stockholders in Minnesota; and while non-resident stockholders would thus have the right to share in all the profits of a successful enterprise, they could not be compelled to fulfill their promises to creditors in the case of a losing one."

If we assume, as we must, that the liability is enforceable in any and every jurisdiction, what reason is there for denying recognition to the receiver appointed for that purpose who brings forward in his person the claims of all the several creditors in inter-

est? To compel those creditors to join in such a proceeding as parties plaintiff, would be an obvious inconvenience without corresponding benefit or advantage to any one. Their claims are not the subject of reconsideration or review, for, under the doctrines heretofore referred to, their judgments are conclusive. The only parties in interest, as shown by the decision in Hale vs. Hardon, supra, are the creditors to the original proceeding, who have conformed to the requirements of the local law. These creditors, being parties to that proceeding, are bound by the decree vesting their rights in the premises in a receiver.

High on Rec., § 37.

A payment to that receiver unquestionably relieves the stockholder from any further liability.

Castleman vs. Templeman (Md.), 41 L. R. A. 367-369.

Upon general principles, therefore, nothing except the most technical reasons, and those devoid of any substance whatsoever, can be successfully urged against the right of the present receiver to maintain the suit in question, and this, whether he be termed a statutory or a receiver of a court of equity.

But another and all-sufficient reason for recognizing, not alone the standing, but the absolute right of the receiver in question may be found in the case at bar. It has been heretofore shown that the statutes expressly provide for the appointment of a receiver by the court as an incident to the administration of the fund. In this view the receiver may not inaptly be termed one of the statutory agencies, provided by the laws of the domicil, in case of the insolvency of the corporation. It is immaterial in this regard whether this agency be committed to a specially designated official or generally to a person to be designated by an appropriate court for the purposes contemplated.

In Relfe vs. Rundle, 103 U. S. 222, the laws of the State of Missouri provided that, in case of the insolvency of a corporation of that state, a designated state official should succeed to the rights and interests of the company, for the purpose of winding up its affairs, and it was held by the Supreme Court that such agency was a part of the contract with the state, binding alike upon the corporation and its constituent members.

In Parsons vs. Charter Oak Life Insurance Co., 31 Fed. Rep. 305, 309, the laws of the State of Connecticut provided that in case of corporate insolvency the courts of that state, upon application of

a designated official, should cause a receiver to be appointed, and it was held that the person thus designated by the court was as much a statutory agent of the state as though specifically indicated by the statute in the first instance.

In the case first cited, this court said:

"We are aware that, except by virtue of some statutory authority, an administrator appointed in one state cannot generally sue in another, and that a receiver appointed by a state court has no extra-territorial power; but a corporation is the creature of legislation, and may be endowed with such powers as its creator sees fit to give. Necessarily, it must act through agents, and the state which creates it may say who those agents shall be. * * * * The appellees, when they contracted with the Missouri corporation, impliedly agreed that if the contract was dissolved, under the Missouri laws, the superintendent of the insurance department of the state should represent the company in all suits instituted by them affecting the winding up of its affairs."

No sound rule or reason can be advanced denying the right of a state, by appropriate legislation, to subdivide these so-termed corporate agencies in cases of insolvency as it may see fit. If, by such legislation, the administration of one part of the entire fund available, in case of insolvency, is committed to one, and another to another, agency, this is mere matter of legislative expediency.

The authority of the state is unquestioned, and the result, both as respects the character of the agency itself, and the implied assent thereto by the stockholders, must, of necessity, be the same. This is the principle of decision applied by the Court of Appeals of the First Circuit in Hale vs. Hardon, supra, fully sustaining the right of the plaintiff to sue in a foreign jurisdiction, wherefrom we excerpt as follows:

"The plaintiff is not a common law receiver representing the interest of all the parties; he is not a statutory receiver by express personal or official designation, as in Relfe vs. Rundle, supra; he is not a receiver who has leave to sue; but he is a receiver appointed by the court, under an express statutory provision, and an imperative requirement that the courts shall appoint, and is exercising the functions which the law-making power intended he should exercise, and is exercising such power under the authority of the statute conferred by the court, not by law, as in the other class of cases, but by express authority and direction, which charge him with the specific duty. It being the statutory intent to have the separate and distinct interests of the creditors against stockholders represented by a separate and distinct statutory agency, an express provision 'that the court shall appoint one or more receivers for the interest of the corporation, and a separate

receiver for such interests of the creditors,' would have meant no more than the provision actually employed that 'the court * * * * shall appoint one or more receivers' means under fair and reasonable intendment."

And on page 775:

"Whether a receiver shall or shall not maintain an action extra-territorially is not a question of absolute right. A receiver does not possess the absolute right to sue in a foreign jurisdiction. Neither does an absolute right exist on behalf of a defendant that he shall not sue. Under our system of territorial and state divisions, and the resulting quasi independent judicial systems, there is and can be no imperative and absolute right on the subject. If this action at law is maintained, extra-territorially in favor of a receiver, in aid of a parent proceeding in Minnesota, it is upon wholesome grounds of public policy, and of justice and comity.

"* * * * As such rule would operate in the direction of right and equity and in the direction of convenience, and would effectuate the purposes of justice, we think it should be held to exist as an inherent necessity in our system of government."

See also,

Howarth vs. Angle, 162 N. Y. 179;

Tompkins vs. Blakey, 49 Atl. Rep. 111;

Howarth vs. Lombard, 175 Mass. 570.

In Childs vs. Cleves, 95 Me., supra, the same conclusion was announced by the Supreme Court of Maine in reference to a receiver similarly appointed under the statutes of Minnesota, in a suit brought for the enforcement of the liability of stockholders.

Upon this point the court say as follows:

"But it is insisted, in behalf of the defendant, that as plaintiff receiver is not vested with any of the rights or assets of the corporation, he is not entitled to maintain a suit against a stockholder in another jurisdiction. It is contended that his official character is not essentially different from that of an ordinary master in chancery, appointed as the hand of the court to render incidental aid in the litigation. * * * *

"Here, again, we should look to the decisions of the Minnesota courts for some declaration of the true purpose and policy of the legislature in enacting this statute. In the first place, as has already appeared, it has been held repeatedly in that state that this constitutional or statutory liability of the stockholders is a liability to the creditors. It forms no part of the assets of the corporation, and it cannot be enforced by the corporation. Hence it is obvious that the receiver originally appointed in this case to receive and distribute the existing assets of the bank, unless expressly authorized by the statute, would have no authority to en-

force the individual liability of stockholders for the purpose of paying the debts of the corporation (*In re* Peoples Live Stock Ins. Co., 56 Minn. 180; Olson vs. Cook, 57 Minn. 552, supra). And inasmuch as the general scheme of liquidation devised by the Minnesota statute requires an accounting and a pro rata distribution among all the creditors, it follows that individual creditors could not maintain an action under this statute against an individual stockholder, either in Minnesota or elsewhere. * * * *

"In Relfe vs. Rundle, 103 U. S., supra, the statute made an official designation of the insurance superintendent as the receiver or trustee, and the power of appointing that officer was intrusted to the executive. * * * * In neither case does the statute make a personal selection of the receiver; and no essential difference in principle can be suggested between the receiver in Relfe vs. Rundle, supra, and the receiver in the case at bar, respecting the capacity to sue in a foreign jurisdiction."

In the interpretation and development of the contractural features which have always seemed to the writer hereof to lie at the foundation of all the several questions presented in this class of cases, we have heretofore argued that this question of the right of a receiver to sue could be similarly ascribed to the express contract of the stockholder whereby there was promised to be paid, in the event of the corporation's insolvency, to the creditors or the party designated by the court for that purpose, the amount of the ascertained contribution.

In this view, and assuming its correctness, the receiver, upon the happening of the specified contingency, became a substituted promisee, and asserted the obligation as a matter of right and as running to himself directly.

Since the original presentation of this theory the Supreme Court of Connecticut, in the recent case of Fish vs. Smith, 47 Atl. Rep. 711, 713, have advanced the principle as applicable and governing the right of a receiver as respects unpaid capital as follows:

"The defendant by his contract of membership came into the obligation to respond to any demand that might thus be made by the proper court in Minnesota. There the corporation was created. There is was subject to the jurisdiction of the courts. There, should it be insolvent, its affairs would be wound up by judicial proceedings. His obligation to pay the balance due upon his shares was a conditional one. * * * * The law of Minnesota had provided for such a contingency. It had armed, in that case, one of its courts with power to appoint a receiver and required payment to be made to him. This law entered into the obligation of the defendant's contract. The call made under it converted that obligation from a conditional one into an absolute one and made the receiver the party to whom its performance was

due. * * * * In legal effect then part of the obligation assumed by the defendant was that, in case of its insolvency, before he had been called upon to pay the balance due upon his shares, he would pay it, should it be needed to satisfy creditors, to a receiver duly appointed in Minnesota. * * * * Having promised, in legal contemplation, to pay the sum now in question, to any receiver properly appointed, the plaintiff was entitled to bring suit on this contract in any state where the defendant might reside. His action was founded, not on the right of a foreign receiver to sue upon demands in favor of the party he may represent, but on the right of a substituted promisee to sue a promisor whose contract provided for such substitution."

Whether, therefore, this question be considered in the light of modern law, according standing on principles of comity to the administrative officers of corporations of foreign states, or upon the theory of express statutory agency with the succession therein involved, or upon what may be termed the strict contractual feature of promise by substitution, the right of the receiver in any event is fully sustained.

VI.

JURISDICTION IN EQUITY.

The present bill, as heretofore stated, was filed by petitioner against the several stockholders resident in the Commonwealth of Pennsylvania, to compel their contribution to the amount provided by the Minnesota laws and ascertained by the decree of the Minnesota court.

The right to invoke the jurisdiction of a court of equity may be considered under the three heads assigned in the specifications of error below and here.

First—The right asserted was equitable in character.

Second—The bill was filed in aid of and to enforce the decree of another court of chancery.

Third—That jurisdiction may be sustained on the ground of avoiding a multiplicity of suits.

These several grounds will be considered in their order.

(a) CHARACTER OF THE RIGHT INVOLVED.

Under all the several authorities to which the attention of this court has been called above, the nature and character of a stock liability imposed by the statutes of a state is determined by the local laws, and is legal or equitable accordingly.

This principle was adverted to by this court in Fourth National Bank vs. Franklin, 120 U. S. 747, 756, in the following language:

"The question whether the remedy in the Federal Court should be by action at law or by suit in equity, depends upon the nature of the remedy given by the statutes of the state."

See also,

McVicker vs. Jones, 70 Fed. Rep. 754;

Bank vs. Rindge, 57 Fed. Rep. 279.

It follows as a necessary consequence from the established rule, that the remedial statutes of the domicil may qualify the right thereby created, that the character of that right is established by those laws, and that such character follows it in every jurisdiction where it may be asserted.

Terry vs. Little, supra.

Applying the principles announced by this court in Flash vs. Conn, supra, to the effect that a uniform construction must be adopted for the local law in every jurisdiction, and that this court will not construe such statutes in a different manner in a case coming from Pennsylvania, from what it would in a case originating in Minnesota, it must be conceded that under those statutes, both by force of their express provisions and as interpreted by the highest courts of that state, the right of the creditors in and to the fund contemplated from the stock liability is equitable in character.

This result arises not alone by virtue of the fact that the machinery of a court of equity is necessary to render the fund available, but equally from the inherent nature of the right itself and the relation of the parties. No creditor has, or ever had, a *legal* right against any stockholder by force of the constating statutes in question.

As said by this court in Terry vs. Little, supra, "The liability of the stockholders is not to any individual creditor, but for contribution to a fund."

And again in Patterson vs. Lynde, 106 U. S. 519, 521, "the liability is not to the creditors but for the debts."

The nature of the right, for purposes of determining whether it is legal or equitable, is not to be confused with the provisions of the remedy by which it may be made available. So far as the latter qualifies the right, as heretofore stated, it enters into the right itself.

The right arose from the contract between the parties, and existed from the time that the stockholder acquired his stock or the creditor his obligation, although occasion for its exercise or enforcement may not have arisen until later.

This right was the same as to every stockholder and every creditor in every jurisdiction, and has not and could not be modified in its intrinsic features by any subsequent proceedings whatsoever.

The performance by the courts of the domicil of the several offices contemplated by the local law have served to measure the amount in which the right may be made available, but the obligation of the stockholder remains as before, to contribute to the fund, and the right of the creditor similarly remains to participate in that fund.

It was insisted by the appellees in the lower court that, assuming the allegations of petitioner's bill to be true, and that the Minnesota proceedings were to be accorded the effect claimed, the result was that the ordinary relation of debtor and creditor existed, and that there was nothing left for the stockholder but to pay the amount of his liability or say that that liability had been already paid, or that he was not in fact a holder of stock.

If this were true it would not necessarily militate against the right to invoke the jurisdiction of a court of equity for reasons hereinafter stated, but it is not and cannot be true, unless it first be established to the satisfaction of the court that the original relation between creditor and stockholder, as provided by the laws in question, has been changed by force of the Minnesota decree.

It was further urged below that upon the allegations of the bill, the situation presented was identical with that existing after an assessment by the court for unpaid capital.

This reasoning loses sight of the obvious distinction between the contractual relations which give rise respectively to these separate obligations. The obligation of the stockholder to the extent of the amount remaining due and unpaid upon his stock is clearly legal.

Sanger vs. Upton, 91 U. S. 56, 62.

The corporation may recover this liability as any other debt due and owing to itself, and the receiver or assignee succeeding to the rights of the corporation in this respect becomes the assignee of a legal chose in action.

Sanger vs. Upton, supra.

In proceedings by the assignee or receiver in such cases, after assessment by the court, the right remains as in its inception, and the effect of the assessment is merely to measure the amount in which that legal right shall be enforced.

Under the laws to which the rights of the respective parties are ascribable in the case at bar, no such legal right ever arose. The only obligation was solely ascribable to the local law, which, as heretofore stated, created the privilege upon the part of the creditor to participate in, and the obligation of the stockholders to contribute to, the fund contemplated from the statutory liability.

Appellees claimed in the court below that the nature of the right asserted was to be determined exclusively with reference to the allegations of the bill, and this is true with the qualification that the allegations themselves are to be interpreted with reference to the local law to which the rights therein alleged are referable, and of which this court will take judicial cognizance.

Bank vs. Franklin, supra.

It was further contended below that upon the allegations of the bill and the law relating thereto, as interpreted by petitioner, there were no offices for a court of equity to perform in the present proceeding, and that the sole relief consisted in a decree for the payment of money. This may or may not be true, according as the grounds of jurisdiction hereafter considered are held available or not.

The claim, however, overlooks the essential jurisdictional feature, viz.: that, given an equitable right, jurisdiction of a court of equity may always be invoked, and this is without regard to the nature of the relief demanded, whether legal, equitable or partaking in a measure of both.

Vol. 1, Pom. Eq. Jur., 97, 137.

It was further contended below that by the present bill petitioner sought to unite in one proceeding a large number of several and distinct actions, wherein no one of the defendants had any interest in the controversy of any other, etc. Had these defend-

ant stockholders resided within the jurisdiction of the courts of corporate domicile, they would have been brought into a single action in those courts in which the amounts of their several contributions would have been ascertained. Had they been omitted from the original action and subsequently been found within the jurisdiction of the court, the proceedings would have been opened, and they brought in to respond to the amount of their ascertained contributions for the creditors.

Hanson vs. Davidson, supra.

The proceeding here, in its present form, is the nearest approach to that provided by the domiciliary law, and conforms in all respects to the principles frequently adverted to by this court, to the effect that the nature of the remedy given the creditors at home shall determine and characterize that available abroad.

Had the proceedings been instituted by all the creditors in interest, after the Minnesota decree, and in the absence of the appointment of a receiver therein, it would hardly be contended that the proper forum or remedy was at law. In such case a court of equity would unquestionably have held that the obligation asserted, contemplating the creation of a fund, involved an appropriate exercise of its jurisdiction in distributing the same to the parties thereto entitled.

The fact that all the several creditors are brought forward in the person of the receiver, and that the necessity of formally distributing in the forum, is upon principles of comity dispensed with, and the fund derived from the enforcement of the liability permitted to be returned into the courts of the domicile, to be there distributed in common with the remainder derived from all sources whatsoever, in nowise qualifies the case and principle.

In cases of liability arising upon unpaid subscriptions and legal in character, as heretofore stated, it has been repeatedly asserted that the receiver has a choice of remedies, and may avail himself of the independent remedy against stockholders severally, at law, or jointly against all within the reach of process by a bill in equity.

In Sanger vs. Upton, 91 U. S. 56, 62, the suit was brought by an assignee in bankruptcy of a corporation after an assessment made for the entire unpaid balance of the corporate stock.

Speaking of the appropriate remedy, this court said:

"If the company had sued, it might have sued at law. The right of the company passed to the assignee, and he could also enforce

them by a legal remedy. The assignee might have filed a bill in equity against all the delinquent shareholders jointly."

In Vol. 5, Thompson on Corp., § 6962, the author speaking of this same subject says:

"The receiver will bring actions at law against the stockholders severally, to enforce what is due by each, under the order of assessment, or bring an action in equity against all of them collectively, if they reside within the jurisdiction, and if other circumstances exist, making that mode of proceeding convenient."

The same rule is stated in Vol. 1, Morawetz on Corp. (4 Ed.), § 208, and Angel and Ames on Corp., § 626.

In re Crystal Springs Bottling Co., 96 Fed. Rep. 945, after the assessment in the bankruptcy court for the unpaid capital of the bankrupt corporation, it was held that the assignee could file a bill against all the stockholders to recover the same, the court saying:

"According to Patterson vs. Lynde, 106 U. S. 519, there should be one suit in equity for the adjustment of the whole matter as to all within the jurisdiction."

In Stoddard vs. Lum, 159 N. Y. 265, a bill in equity filed by the receiver of an insolvent Illinois corporation against some fifteen or more stockholders thereof, residing in the State of New York, was sustained by the Court of Appeals of that state, the court saying:

"The assignee can maintain in the courts of this state an action in equity against all original stockholders residing here, to enforce their common law, contractual liability to pay the subscription prices of their stock, by compelling them to contribute their pro rata shares of the indebtedness of the corporation after its assets had been exhausted, to the extent of the amounts remaining unpaid upon their stock."

If this alternative of remedies be available, in the case of the clear and indisputable legal liability arising from unpaid subscriptions, much stronger reason obviously exists for asserting the existence of such jurisdiction in the case at bar.

(b) JURISDICTION OF THE BILL AS ONE TO ENFORCE A DECREE.

No question has been or can be made of the chancery jurisdiction in cases where the object of the suit is the enforcement or carrying into effect of the decree of the court itself or other courts of equity.

Story Eq. Pl., §§ 429, 430, 431;
Mitford Eq. Pl., 95;
Cooper Eq. Pl., 98, 99;
2 Beach Mod. Eq. Pr., § 903;
Shainwald vs. Lewis, 69 Fed. Rep. 487, 493, 494.

Upon this claim of jurisdiction it was contended by appellees in the Circuit Court that no jurisdiction existed where the original decree was for the payment of money.

In the Circuit Court of Appeals this claim was abandoned in view of the decision of this court in Shields vs. Thomas, 18 How. 253, 261, 262, wherein the original decree rendered in the state courts of Kentucky was for the payment of money alone and jurisdiction of a bill to enforce the same was sustained in the Circuit Court of the United States for the district of Iowa. In that case this court said:

"The remaining objection arising upon the demurrer, which we deem it necessary to consider, is that urged against the right of the appellees to institute proceedings in equity in the State of Iowa, to enforce the decree rendered in their favor by the court of Kentucky. We can perceive no force in the effort to sustain this objection by citation of the seventh amendment of the Constitution of the United States, which provides 'that in suits at common law, where the value in controversy shall exceed five hundred dollars, the right of trial by jury shall be preserved.' This provision, correctly interpreted, cannot be made to embrace the established, exclusive jurisdiction of courts of equity, nor that which they have exercised as concurrent with courts of law; but should be understood as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law.

"With respect to the character and effect of decrees in chancery, although they now rank in dignity upon an equality with judgments at law, it is well known that they were once regarded as not being matters of record; and that the final process incident to judgments at law was unknown to and not permitted in courts of equity; that where such process has been permitted to them it has been the result of statutory enactments. But the extension to a court of equity of the power to avail itself of common law process cannot be regarded as implying any abridgement of the original constitutional powers or practice of the former; but as cumulative and ancillary, or as leaving those powers and that practice as they formerly existed, except as they have been expressly restricted. Amongst the original and undoubted powers of a court of equity is that of entertaining a bill filed for enforcing and carrying into effect a decree of the same, or of a different court, as the exigencies of the case or the interests of the parties may require. *Vide* Story's Equity Pleadings, §§ 429, 430, 431, upon the authority of Mitford, Eq. Pl., 95, and of Cooper's Eq. Pl., 98, 99."

As stated above, the claim of lack of jurisdiction in cases where the original decree called for the payment of money, was abandoned in the Court of Appeals and in lieu thereof appellees as-

serted that there was no decree against them which could be made the basis of jurisdiction on the ground here under consideration. We have already called the court's attention to the holding of the Court of Appeals of the Third Circuit in Elkhart National Bank vs. Loan Co., in speaking of the decree contemplated by the Minnesota statutes and the appropriate remedy thereon, as follows:

"Of course, if the decree is conclusive, the court could not enforce it against foreign stockholders, but in such case *it might be enforced by auxiliary equity proceedings* where the stockholders reside."

The correctness of this holding, as respects the jurisdiction, cannot be doubted if correct regard be given to the principles established by this court in Hancock National Bank vs. Farnham, supra.

It is true that so far as the decree of the Minnesota court ascertained the necessity for and amount in which all the stockholders in common should contribute, it was not a decree in the sense of a personal judgment against appellees.

Great Western Telegraph Co. vs. Purdy, supra.

But in so far as it adjudicated by its decree the amount of the corporate debts, the assets available for the liquidation thereof and the deficiency to be contributed by the stockholders, it was a decree against them, and as such entitled to the same faith and credit in every jurisdiction as accorded it in the courts of the state of its rendition.

In other words, it was a decree against appellees, binding and conclusive upon them by representation to the extent indicated, until impeached for fraud.

Hawkins vs. Glenn, supra.

Had the law and procedure prescribed for such cases in Minnesota been confined to an ordinary assessment, or *ex parte* order, some question might be raised as to whether such order or assessment constituted a decree within the meaning of the jurisdictional ground under consideration.

But as by that law it is required that the proceedings had in the domicil shall proceed in due course to a final decree, it cannot be contended in view of the holding of this court in Hancock National Bank vs. Farnham, supra, that this was not a decree against these defendants.

It is true that, as held in the case last cited, it may be met by so-termed individual defenses, viz.: payment, or the fact that de-

fendant was not a stockholder, but in all other respects it is a decree conclusive and binding upon him.

Under these circumstances no substantial reason can be suggested why the case at bar falls without the scope of the original jurisdiction of equity exercised in auxiliary proceedings for the purpose of carrying out and effectuating the decree, as against these defendants.

(c) JURISDICTION ON THE GROUND OF AVOIDING A MULTIPLICITY OF SUITS.

In the absence of some insuperable objection, the facts and situation of the case at bar present the most cogent reasons of convenience, expediency and economy in favor of the exercise of the comprehensive jurisdiction of a court of equity.

The fact that that jurisdiction has been exercised in analagous cases should resolve any doubt in favor of its existence.

No argument, however plausible, can convince the court that threshing out the questions of law and fact, common to the cases of all the defendants herein, and on which petitioner's rights are predicated, in forty-seven actions at law is as "plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity."

No abstract definition can be given, or arbitrary rule laid down, applicable to all cases, of the precise grounds whereon equity will assume jurisdiction and afford relief.

"The circumstances of each case must determine the application of the rule."

Rich vs. Bracton, 158 U. S. 405;
Payne vs. Hook, 7 Wall. 430;
Watson vs. Sunderland, 5 Wall. 74.

An action by an insurance company against a carrier for loss of goods, insured by the former, after payment of its policy and subrogation to the shipper's rights, would seemingly present no features of equitable character.

Notwithstanding, where the insurer had paid fifteen such policies on goods destroyed by the same carrier and in the same accident, a bill in equity was sustained, this court saying:

"The bill discloses fifteen different contracts of affreightment of a similar character which have been adjusted by the appellees and which form the subject of this suit. They have been joined in the same bill, and much inconvenience and vexation have been prevented."

Garrison vs. Memphis Ins. Co., 19 How. 312.

The reasoning of the lower courts in the case at bar, applied to the decision last cited, would have unqualifiedly denied jurisdiction, as an attempt to try fifteen suits, having no contractual connection, in one, wherein the defense of the carrier might be different in each, owing to the different classes of freight, etc.

In Oelrichs, vs. Spain, 15 Wall. 211, suit was instituted in equity against the obligors of, and to recover on, several injunction bonds. In answer to the objection that equity was without jurisdiction because there was an adequate remedy at law, this court said:

"The direct proceeding in equity will save time, expense and a multiplicity of suits, and settle finally the rights of all concerned in one litigation."

It may be noted in this case that the only multiplicity suggested was between the several obligees themselves in which the obligor defendants obviously had no interest.

This court has said of the grounds of chancery jurisdiction:

"The jurisdiction in equity attaches unless the legal remedy, both as respects the final relief and *the mode of obtaining it*, is as efficient as the remedy which equity would confer under the same circumstances."

Kilbourne vs. Sunderland, 130 U. S. 505-514.

"The equity jurisdiction will be sustained when time, expense and a multiplicity of suits will be saved."

Oelrichs vs. Spain, 15 Wall. 211.

"There may be a legal remedy, and yet, if a more complete remedy can be had in chancery, it is a sufficient ground for jurisdiction."

Wylie vs. Cox, 15 How. 415.

"Parties are sometimes remitted to a court of law, but this is never done where the remedy is not as effectual and complete there as the chancellor can make it. Equity sometimes takes jurisdiction on account of the parties and sometimes on account of the relief proper to be administered."

May vs. Le Clair, 11 Wall. 217-236.

Other illustrations might be cited, but the foregoing will suffice to demonstrate the breadth and liberality of the exercise of the jurisdiction.

We contended below that the case at bar fell within the class where a large number of parties are interested in a litigation hav-

ing similar origin, depending on common questions of fact and law, and wherein those questions could be more expeditiously and conveniently disposed of in equity, both for parties and court, than by proceeding at law. We further contended that in and by one proceeding all these questions could be disposed of in a single comprehensive decree, and that in this method an unnecessary and vexatious multiplicity of suits would be avoided.

In opposition, it was urged that there was no privity between the several defendants; that their obligations were several and distinct; that the common questions were questions of general law, involving the extra-territorial effect of the Minnesota statutes and judicial proceedings, as well as the right of the receiver to sue, and finally that there was no state of facts alleged in the bill or prayer calling for the exercise of the peculiar functions of a court of equity.

It was further objected that the bill must invoke the exercise of equitable jurisdiction on the strength of its own allegations and the theory presented by it. Following this, an analysis of the bill was resorted to, and the conclusion reached that plaintiff presented a claim in contract, arising from the defendants' subscriptions to the stock; that the amount of the liability was claimed to have been conclusively ascertained in the Minnesota proceeding; that from the same source complainant claimed to derive his right to sue, and therefore all that was left on complainant's theory for the several stockholder defendants were the so-termed separate and independent defenses that they were not stockholders or had paid their contributions.

It was therefore asserted that there were no common grounds other than similar legal propositions that complainant must establish as a condition to relief, and no common defenses on the part of the defendants.

So far as the available defenses claimed by complainant to be open to the defendants were concerned, no defendant was interested in the defense of any co-defendant, and the result of permitting the joinder of all in a single suit would be the equivalent of combining several separate and distinct legal demands seeking the recovery of as many debts.

In the foregoing we have attempted to fully summarize the line of objection pursued below.

These objections present more of the plausible than substantial, and an analysis thereof cannot fail to disclose a confusion of matter going to the merits or bearing upon the ultimate right

to relief, with matter going strictly to the question of jurisdiction to grant that relief.

Furthermore, their plausibility is weakened by the unmistakable evidence of dilatory tactics and obstructive technicality.

(1) That petitioner's right of recovery *on the merits* depends upon the essential averments of the bill, and the theory of right thereby presented goes without saying. That unless those facts and the ultimate conclusions claimed to be deducible therefrom be sustained, petitioner is not entitled *to relief on the merits*, is obvious.

This, however, has nothing to do with the question of jurisdiction.

The requirement, so far as the latter is concerned, upon the ground presently under consideration, is satisfied by showing that the case of petitioner against each of the defendants had a common origin in the insolvency of the corporation of which they were members, and with which they were privy, and the laws of Minnesota relating thereto and governing the status thus alleged, whereunder all became similarly liable.

The common requirement thus indicated, both in matter of fact and law, as a condition to recovery, as respects each defendant, with the common interest of each defendant in resisting *each essential ground* thus relied upon, is the basis for assumption of jurisdiction in equity to obviate the necessity of asserting and establishing in each of forty-seven different proceedings what may be passed upon in a single comprehensive decree.

(2) The averments of the bill fully disclose these jurisdictional phases, and it is utterly futile for appellees to attempt to disguise what is perfectly apparent on the record by resorting to such generalities as those disclosed above.

One of the most conspicuous fallacies indicated by the proceedings below is found in the reasoning of the Circuit Court on the subject under consideration, as follows:

"The bill asserts the conclusiveness of the Minnesota decree upon the defendants, so far as the necessity for the assessment and the amount charged against each stockholder are concerned; Hancock Bank vs. Farnum, 20 S. C. Rep. 506. Assuming that position to be sound—and, if I do not so assume it, if these questions are still open for determination, so far as the Pennsylvania stockholders are to be affected, the bill must fail for want of necessary parties—it is clear that only two classes of questions remain to be decided. The first is, whether a given stockholder was ever lia-

ble as such; and the second is, whether, if he were originally liable, his liability has ceased either in whole or in part. Manifestly, as it seems to me, the defendants have no common interest in these questions, or in the relief sought by the receiver against each defendant."

Record, pps. 117-118.

In other words, unless petitioner *has maintained his right to relief* he has not shown sufficient to confer jurisdiction.

And again from the same opinion:

"Before a controversy between a receiver and numerous separate debtors of the corporation can be joined in one proceeding, there must be some common relation, or common interest, or common question to serve as a basis for the joinder." (Rec., p. 117.)

Combining the two proposition quoted, the result is, that if common questions exist, jurisdiction may be invoked successfully, but that such common questions cannot be held to exist when the right to relief necessarily presupposes establishing their existence and interpretation according to the pleader's claim.

Such reasoning so clearly confounds "jurisdiction" and "right to relief" as to be self-destructive and its own best refutation.

See Vol. 1, Pom. Eq. Jur., § 131.

(3) It is said that the bill shows no community of interest between the defendants in questions of fact or law. Yet the record submitted to this court discloses that all the defendants are asserting and relying upon common grounds of defense to meet the common claim asserted against all, viz.: want of extra-territorial effect to the Minnesota laws; denial of the efficacy of the proceedings in the courts of that state, and the want of any remedy or right of enforcement of the liability.

(4) It is said that the bill does not allege that it invokes jurisdiction on the ground of avoiding multiplicity of suits. If the failure to make this allegation was of any materiality, it was something not calling for a dismissal, and was easily remedied by amendment. If the facts alleged showed a state of facts justifying the exercise of jurisdiction on this ground, its addition would add nothing. On the other hand, if the substantial allegations were insufficient in the respect indicated, its presence would not avail.

(5) It is said that the bill does not allege any common defenses, and nothwithstanding the demurrers "*non-constat*," the defendants will present any other defense than want of jurisdiction in equity."

Assuming a defect in the respect indicated, it is too late for defendants to avail themselves thereof. They, by asserting the common defenses by demurrer, have themselves supplied by their own pleading what they claim has been omitted from the bill.

(6) The assumption that the only defense open is that of payment or non-stockholding is anticipation. On the demurrers there are no defenses in either regard. The facts stand admitted. The case is thus bereft of a single substantial element save that common to all, and involved in the common grounds asserted by the demurrers.

Powell vs. The Earl of Parvis, 1 Yon. & Jer. 159;
Commissioners vs. Glasse, 41 L. R. Ch. N. S., 409.

(7) Taking the facts and situation of the case, as thus presented, is it not too obvious to require comment, that the objection to the jurisdiction of equity is wholly unsubstantial and that the real and substantive grounds involved are such as may be passed upon once and for all in a single suit?

Is it not obvious that the attempted remission of petitioner to a court of law is to embarrass the prosecution of these claims, by multiplying the litigation in the hope that requiring threshing over the same straw again and again in forty-seven distinct and separate actions may prove so extravagant an investment that the issue may be abandoned and defendants thus escape?

(9) If facts ever disclosed a case for the exercise of liberality as respects the interpretation of jurisdiction, the experience of this litigation in the circuit in question presents such a case.

But it is unnecessary to urge any application of unusual or extraordinary rules.

The facts here disclose a case falling fairly within the rules relating to jurisdiction on the ground of avoiding multiplicity of suits.

Hereunder it should be noted in the first instance that this ground in and of itself, and without regard either to the character of the right asserted or relief demanded, constitutes a *distinct element* of jurisdiction.

As said by Prof. Pomeroy:

"In fact, the multiplicity of suits, which is to be prevented, constitutes the very inadequacy of legal methods and remedies, which cause the *concurrent* jurisdiction to intervene under such circumstances."

Vol. 1, Pom. Eq. Jur., § 243.

The use of the term "concurrent" is pertinent in the explanation thus quoted, for, obviously, if the right involved or the relief invoked were equitable, the jurisdiction would be exclusive.

Vol. 1, Pom. Eq. Jur., § 139.

The prevention of multiplicity of suits as an independent jurisdictional ground has been frequently recognized in the federal precedents.

Smythe vs. Ames, 169 U. S. 466-516;
Louisville Ry. Co. vs. Improvement Co., 57 Fed. 42-45;
Pomeroy, § 243, supra;
McConwaughy vs. Permoyer, 43 Fed. 337;
Hyman vs. Wheeler, 33 Fed. 629, per Brewer, J.;
De Forrest vs. Thompson, 40 Fed. 375, per Harlan, J.

Jurisdiction on this ground is undoubtedly most frequently called into exercise in cases where some right is asserted by numerous defendants against complainant which the bill seeks to have adjudged invalid, or cases relating to titles in lands where a number of defendants claiming under a common source of title are asserting rights adverse to complainant claiming the whole under an independent source, etc.

These cases, however, are not the grounds of, but mere illustrations of, the exercise of jurisdiction.

The general rule determinative of the case at bar is thus defined by Prof. Pomeroy:

"The fourth (class) is the exact converse of the third. One determined party has a general right against a number of persons, *common to all in some of its features, but still affecting each individually, and only with respect to his separate, distinct interests;* so that each of these persons has a separate and distinct claim in opposition to the asserted right."

Again, "The only community among them is in the questions at issue to be decided by the court, in the mere external fact that all their remedial rights arose at the same time from the same wrongful act, are of the same kind, involving similar questions of fact, and depend upon the same questions of law. This sort of community is sufficient, in the opinion of so many and so able courts, to authorize and require the exercise under such circumstances of the equitable jurisdiction in order to prevent a multiplicity of suits."

Again, "Under the greatest diversity of circumstances and the greatest variety of claims arising from unauthorized public acts, private tortious acts, invasion of property rights, violation of contract, obligations, etc., the weight of authority is simply over-

whelming that the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such numerous body, although there is no common title nor community of right or of interest in the subject matter among these individuals, but where there is and because there is merely a community of interests among them in the questions of law and fact involved in the general controversy or in the kind and form of relief demanded."

Vol. 1, Pom. Eq. Jur., §§ 255-259-260.

See, also, generally, Vol. 1, Daniels Ch. Pr. (Ed. 1845), 445-446;

Mayor of York vs. Pelkington, 1 Atk. 282;

City of London vs. Perkins, 4 Bro. Par. Ca., 158;

Tenham vs. Herbert, 2 Atk. 483.

The question was squarely presented and decided by the Circuit Court of Appeals of the Sixth Circuit in the recent case of Bailey vs. Tillinghast, 99 Fed. Rep. 801, wherefrom we excerpt the following:

"For this latter purpose it is immaterial whether the suits to be avoided or prevented are of a legal or an equitable character. The object is the same in either case, and the reason for the proceeding is the same. * * * * The object is to minimize litigation, not only in the interest of the public, but also for the convenience and advantage of the parties. If the receiver was compelled to bring separate suits it would entail a vast expense upon the fund in trying over and over again the identical questions of law and fact with each stockholder, and with no substantial advantage to him, but injury rather in the increased costs in the immediate suit and the large burden upon the fund created by the many suits against the others."

Similarly, the Court of Appeals of the Eighth Circuit, in Hayden vs. Thompson, 71 Fed. Rep. 60:

"If this suit cannot be maintained, the receiver must bring a separate action at law and have a separate trial by jury of twenty-four actions, one against each of the shareholders. * * * * * * * * These twenty-four law suits constitute the adequate remedy at law, which, it is argued, prohibits the maintenance of this suit in equity, but the remedy at law which will preclude the maintenance of a suit in equity must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. Would these twenty-four actions at law be as efficient and practical and as prompt to attain the ends of justice as this suit in equity? *The question is its own answer.*"

In Cockrill vs. Cooper, 86 Fed. Rep. 7-14, the same court say:

"In determining whether a suitor should be permitted to sue in equity, the Federal Courts have always attached much importance to the fact that the remedy in the latter forum, as compared with the remedy at law, will save time and expense and a multiplicity of suits and settle finally the rights of all concerned in one litigation. In other words, the argument *ab inconvenienti* is never overlooked, but is given great weight. * * * * If the receiver is compelled to sue at law, numerous actions must be brought. * * * * If the legal remedy is pursued, it is probable, therefore, that the receiver would find it necessary in preparing his proof in numerous cases to travel over much of the same ground in each case, while it is certain that the burden and expense of the litigation would be largely increased, and that the litigation itself would be needlessly prolonged and delayed."

Other cases might be cited, but the foregoing are sufficiently illustrative of the spirit of the rule to bring the case at bar clearly within its comprehensive scope.

CONCLUSION.

In submitting the foregoing, we appreciate that this brief has been extended perhaps unnecessarily in matters of detail. The importance of the questions here at stake, not alone in the case at bar, but generally, will perhaps make sufficient apology in this regard.

For the reasons herein stated, it is submitted that the decision and decree below should be reversed and the cause remanded for further proceedings.

Respectfully submitted,

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